

Director's Protest Resolution Report

**Proposed Resource
Management Plan / Final
Environmental Impact
Statement
for Western Oregon**

August 5, 2016



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-OR-RMPforWOr-16-120-10 **Protest issue number**

Organization: The Forest Initiative **Protesting organization**

Protester: John Smith **Protester's name**

Issue Excerpt Text: **Direct quote taken from the submission**

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary **General summation of the issue excerpts in the topic.**

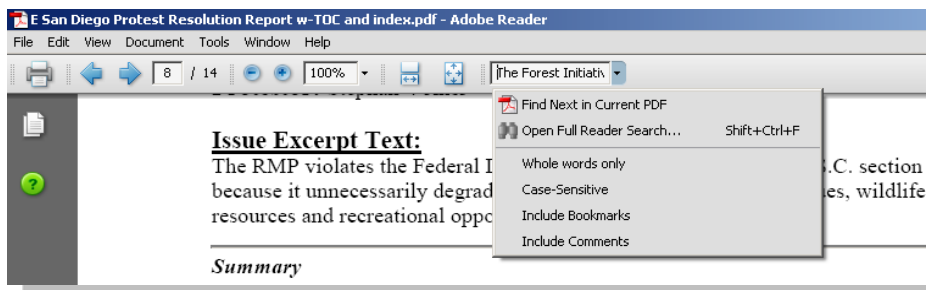
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response **BLM's response to the summary statement or issue excerpt if there is no summary.**

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized by assigned submission number.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	FO	Field Office (BLM)
BA	Biological Assessment	FWS	U.S. Fish and Wildlife Service
BLM	Bureau of Land Management	GIS	Geographic Information Systems
BMP	Best Management Practice	IB	Information Bulletin
BO	Biological Opinion	IM	Instruction Memorandum
CAA	Clean Air Act	KOP	Key Observation Points
CEQ	Council on Environmental Quality	MOU	Memorandum of Understanding
CFR	Code of Federal Regulations	NEPA	National Environmental Policy Act of 1969
COA	Condition of Approval	NHPA	National Historic Preservation Act of 1966, as amended
CSP	Concentrated Solar Power	NOA	Notice of Availability
CSU	Controlled Surface Use	NOI	Notice of Intent
CWA	Clean Water Act	NRHP	National Register of Historic Places
DEIS/DRMP	Draft Environmental Impact Statement /Draft Resource Management Plan	NSO	No Surface Occupancy
DM	Departmental Manual (Department of the Interior)	O&C	Oregon and California Railroad Revested Lands
DOI	Department of the Interior	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
EA	Environmental Assessment	PA	Preliminary Assessment
EIR	Environmental Impact Report	PPA	Power Purchase Agreement
EIS	Environmental Impact Statement	RFDS	Reasonably Foreseeable Development Scenario
EO	Executive Order	RMP	Resource Management Plan
EPA	Environmental Protection Agency	ROD	Record of Decision
ESA	Endangered Species Act	ROW	Right-of-Way
FEIS	Final Environmental Impact Statement	SO	State Office (BLM)
FEIS/PRMP	Final Environmental Impact Statement /Proposed Resource Management Plan	T&E	Threatened and Endangered
FLPMA	Federal Land Policy and Management Act of 1976	USC	United States Code
		USGS	U.S. Geological Survey
		VRM	Visual Resource Management
		WA	Wilderness Area
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Mark Pavlak	Individual	PP-OR-RMPforWOr-16-01	Dismissed – Comments Only
Joseph Quinn	Individual	PP-OR-RMPforWOr-16-02	Denied – Issues & Comments
Linda Kreisman	Rogue Valley Audubon Society	PP-OR-RMPforWOr-16-03	Denied – Issues & Comments
Luke Ruediger	Klamath Forest Alliance	PP-OR-RMPforWOr-16-04	Denied – Issues & Comments
Rick Dyer	Jackson County	PP-OR-RMPforWOr-16-05	Denied – Issues & Comments
David Harrison	Salem Audubon Society	PP-OR-RMPforWOr-16-06	Dismissed – No Standing
Byron Rendar	Individual	PP-OR-RMPforWOr-16-07	Denied – Issues & Comments
Tim Freeman	Douglas County	PP-OR-RMPforWOr-16-08	Denied – Issues & Comments
Kevin Davis	Association of O&C Counties	PP-OR-RMPforWOr-16-09	Denied – Issues & Comments
H. John Talberth	Center for Sustainable Economy	PP-OR-RMPforWOr-16-10	Denied – Issues & Comments
Greg Haller / Chuck Willer / Dean Finnerty / David Moryc	Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers	PP-OR-RMPforWOr-16-11	Denied – Issues & Comments
Kristin Boyles / Todd D. True	Earthjustice, et. al.	PP-OR-RMPforWOr-16-12	Denied – Issues & Comments
Joseph Vaile	Klamath-Siskiyou Wildlands Center	PP-OR-RMPforWOr-16-13	Denied – Issues & Comments
Steve Holmer	American Bird Conservancy	PP-OR-RMPforWOr-16-14	Denied – Issues & Comments
Jennie Bricker	Double R Ranch	PP-OR-RMPforWOr-16-15	Denied – Issues & Comments
Brenda Meade	Coquille Indian Tribe	PP-OR-RMPforWOr-16-16	Denied – Issues & Comments
Dave Willis / Nada Culver / Joseph Vaile	Soda Mountain Wilderness Council / Wilderness Society / Klamath-Siskiyou Wildlands Center	PP-OR-RMPforWOr-16-17	Denied – Issues & Comments
David Mickey	Individual	PP-OR-RMPforWOr-16-18	Dismissed – Comments Only
Neal Anderson / Hope Robertson	Individuals	PP-OR-RMPforWOr-16-19	Denied – Issues & Comments

Travis Joseph	American Forest Resource Council	PP-OR-RMPforWOr-16-20	Denied – Issues & Comments
Kate Gessert	Individual	PP-OR-RMPforWOr-16-21	Denied – Issues & Comments
Kate Gessert	Individual	PP-OR-RMPforWOr-16-22	Denied – Issues & Comments
Kate Gessert	Individual	PP-OR-RMPforWOr-16-23	Dismissed – Comments Only
Kate Gessert	Individual	PP-OR-RMPforWOr-16-24	Dismissed – Comments Only
George Gessert	Individual	PP-OR-RMPforWOr-16-25	Denied – Issues & Comments
Diana Huntington	Individual	PP-OR-RMPforWOr-16-26	Dismissed – Comments Only
Ian Nelson	Pacific Crest Trail Association	PP-OR-RMPforWOr-16-27	Denied – Issues & Comments
Joseph Quinn	Umpqua Watersheds, Inc.	PP-OR-RMPforWOr-16-28	Denied – Issues & Comments
David Calahan	Applegate Trails Association	PP-OR-RMPforWOr-16-29	Denied – Issues & Comments
M. Wally Hicks	On behalf of Josephine County	PP-OR-RMPforWOr-16-30	Denied – Issues & Comments
Debbie Schlenoff	Lane County Audubon Society	PP-OR-RMPforWOr-16-31	Denied – Issues & Comments
Charles Rogers	Williams Creek Watershed Council	PP-OR-RMPforWOr-16-32	Dismissed – No Standing
Christopher Mathews	Audubon Society of Corvallis	PP-OR-RMPforWOr-16-33	Dismissed – Comments Only
Jim Fairchild	Individual	PP-OR-RMPforWOr-16-34	Dismissed – No Standing
Serena Rittenhouse-Barry	Individual	PP-OR-RMPforWOr-16-35	Denied – Issues & Comments
George Gessert	Individual	PP-OR-RMPforWOr-16-36	Dismissed – Comments Only
George Gessert	Individual	PP-OR-RMPforWOr-16-37	Dismissed – Comments Only
Mary Camp	Deer Creek Valley NRCA	PP-OR-RMPforWOr-16-38	Denied – Issues & Comments
Reed Wilson	Benton Forest Coalition	PP-OR-RMPforWOr-16-39	Denied – Issues & Comments
Mahogany & Sole Aulenbach	Individuals	PP-OR-RMPforWOr-16-40	Dismissed – No Standing
Wayne Hoffman	Midcoast Watersheds Council	PP-OR-RMPforWOr-16-41	Dismissed – Comments Only

Grace Brogdon	Individual	PP-OR-RMPforWOr-16-42	Denied – Issues & Comments
Venus Killen	Northwest Ecosystem Survey Team	PP-OR-RMPforWOr-16-43	Dismissed – No Standing
Rana Foster	Individual	PP-OR-RMPforWOr-16-44	Dismissed – Comments Only
Romain Cooper	Individual	PP-OR-RMPforWOr-16-45	Denied – Issues & Comments
John Duggan	Individual	PP-OR-RMPforWOr-16-46	Denied – Issues & Comments

Issue Topics and Responses

NEPA – Purpose and Need

Issue Number: PP-OR-RMPforWOr-16-08-4

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The statement of purpose and need, as well as the range of alternatives, violate the planning criteria of FLPMA14 and the requirements of NEPA by unreasonably defining the alternatives in a manner that artificially narrows the decision space.

The true decision space is in the context of the Oregon and California Railroad Grant; the Act of August 28, 1937 (50 Stat. 874; 43 USC §1181a-1181j); and, the Act of May 24, 1939 (53 Stat. 753) insofar as they relate to management of timber resources.

The failure to include alternatives that address the purposes of the Oregon and California Railroad Grant has not only pre-ordained the decision but has also limited the public's ability to knowingly comment on the proposed actions in the context of the O & C Railroad Grant purposes.

Issue Number: PP-OR-RMPforWOr-16-09-10

Organization: Association of O and C Counties

Protester: Kevin Davis

Issue Excerpt Text: Nevertheless, the PNS reversed the order, and rendered the O&C Act a near nullity, giving sustained yield timber production only begrudging acknowledgement as a remnant, and not even mentioning the production of revenue for counties as an objective.

Issue Number: PP-OR-RMPforWOr-16-09-8

Organization: Association of O and C Counties

Protester: Kevin Davis

Issue Excerpt Text: The Purpose and Need Statement Of The PMRP Illegally Restricted the Range of Alternatives. The AOCC repeatedly objected to the BLM's Purpose and Need Statement (PNS) throughout the planning process. In spite of revenue for Counties being the primary purpose of Congress in adopting the O&C Act, the PNS fails to identify revenue production as an objective. Among numerous examples of the AOCC's objections, is a letter dated June 27, 2013, in which the AOCC sought a meeting to voice its objections to the then draft PNS.

Issue Number: PP-OR-RMPforWOr-16-10-2

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The BLM has misconstrued its legal mandate as one that requires an increase in logging.

Issue Number: PP-OR-RMPforWOr-16-10-3

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: BLM has invoked this legal mandate as the primary purpose and need for the RMP revision process.

Issue Number: PP-OR-RMPforWOr-16-12-10

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM cites as its first purpose of the 2016 WOPR providing a “sustained yield of timber.” The O&C Act says that this “sustained yield” is “for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.” As noted above, these are co-equal purposes that do not specify any particular level of sustained yield of timber, nor could they if all of the purposes are to be met. Yet implicit in the FEIS/PRMP is the premise that some levels of sustained yield timber production have a stronger legal footing than others even if those levels of sustained yield also place other protected resources (and purposes and needs for a plan revision) at greater risk. There is simply no basis for this unstated premise nor is one offered or analyzed. What is missing from the FEIS/PRMP is any explanation or accounting for why the BLM apparently intends to choose the particular level of sustained yield timber production described for the PRMP over some other lower level in light of the acknowledged risk this level of timber production poses to other resources. Since neither the law nor any analysis of the facts by the agency requires or explains the specific level of sustained yield timber production proposed in the PRMP, the decision to select a particular outcome is arbitrary and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-12-16

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: While BLM has

adopted as one of its purposes and needs for the PRMP avoiding future ESA listings, and has acknowledged its own duty to protect sensitive species (responsibilities that have not changed since adoption of the NWFP), BLM is now trying to narrow the purpose and need for this RMP revision by asserting that its wildlife conservation mandate is somehow narrower than it was in 1994. This is incorrect. Wildlife conservation, including both listed and non-listed species, is required both by the ESA and FLPMA, as well as the multiple purposes of the O&C Act (e.g., “permanent forest production,” “regulating stream flow,” and “recreation facilities”).

Issue Number: PP-OR-RMPforWOr-16-12-160

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM fails to acknowledge or discuss the issues raised by the above studies and others or explain why, in light of this evidence, it should not avoid salvage logging and replanting because it increases fire hazard by moving small hazardous fuels from the canopy to the ground where they are more available for combustion and replanting creates a dense continuous fuel profile that is conducive to fire severity and fire spread which will directly inhibit the purpose of the Resource Management Plan to “restore fire-adapted ecosystems.”

Issue Number: PP-OR-RMPforWOr-16-12-36

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comment 6, FEIS/PRMP at 1837-38, BLM

explains that it failed to make carbon storage part of the purpose and need because BLM did not recognize that reducing the effects of climate change would help it meet its legal mandates under the O&C Act and ESA and FLMPA. Executive Order 13653, directs agencies to assess climate change related impacts on and risks to the agency's ability to accomplish its missions and programs. If BLM had properly assessed the effects of climate change on its legal mandates it would have recognized the need to incorporate carbon storage into its purpose and need.

Issue Number: PP-OR-RMPforWOr-16-12-4

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The resulting alternatives in the FEIS do not comport with the[se] objectives because each alternative inexplicably includes components that would threaten wildlife, watershed, and recreational values in an attempt to meet an unstated and unanalyzed "purpose and need" – to increase timber production.

Issue Number: PP-OR-RMPforWOr-16-12-5

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Even if the current level of timber production is not sustainable under the current RMPs as amended as BLM asserts, it has failed to identify any legal standard or other requirement that would make a lower – but sustainable level of timber production – improper.

Issue Number: PP-OR-RMPforWOr-16-12-6

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Given the available information regarding the stated purpose and need for the 2016 WOPR, and the governing legal standards, BLM never explains its apparent assumption that the BLM lands in the planning area are not producing "enough" timber on a sustained yield basis, or why a lower level of sustained timber production is not reasonable and would not, in fact, better meet the agency's stated purpose and need with less risk to the resources and values BLM identifies as integral to meeting the purpose and need for action. It is apparent from the FEIS/PRMP itself that alternative courses of action that produce a lower sustained yield of timber are reasonable and do meet the agency's stated purpose and need because the FEIS includes such alternatives. What the agency has failed to do is identify or explain why those alternatives that produce a lower sustained yield of timber are not acceptable in light of the purpose and need the agency has identified and the applicable law. Instead, the FEIS/PRMP appears to be built on an unstated but overriding need to produce more timber from BLM lands on a sustained yield basis. This unstated and unanalyzed need is impermissible and, as explained below, is not required by any of the laws that govern these lands.

Issue Number: PP-OR-RMPforWOr-16-14-1

Organization: American Bird Conservancy

Protester: Steve Holmer

Issue Excerpt Text: The long-term departure from predicted timber outcomes (p.5) is not a legitimate need for action

because this amount was the end result of citizen engagement in public lands management, application of national environmental laws, and adaptive management on the part of the agency. Laws such as the ESA and the Clean Water Act, and citizen engagement at the project level, including public protests, and a series of court decisions have affirmed that sustainable timber production, while called for, does not have primacy on the Oregon & California railroad revested lands managed under the 1937 O&C Act.

Issue Number: PP-OR-RMPforWOr-16-20-11

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The purpose and need statement in the FEIS is unlawfully narrow.

Issue Number: PP-OR-RMPforWOr-16-20-13

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The ESA does not override or preempt the O&C Act to grant BLM authority to create no-harvest reserves on O&C land. The stated purpose and need for the RMP is illegal.

Issue Number: PP-OR-RMPforWOr-16-20-14

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: BLM arbitrarily and unlawfully constrained the alternatives it

examined by requiring every alternative to contain at least 64 percent reserves.

Issue Number: PP-OR-RMPforWOr-16-28-2

Organization: Umpqua Watersheds, Inc.

Protester: Joseph Quinn

Issue Excerpt Text: BLM categorically states that this revenue issue is not one of the BLM's stated purposes and needs. This denial flies in the face of what is obvious to everyone involved. Because this purpose was not specifically spelled out in the PRMP does not by any means, support BLM's contention. After all, if this revenue supply matter were not of prime interest to all stakeholders, why would the Association of O & C Counties be so busy filing suit against BLM based upon this very issue?

Issue Number: PP-OR-RMPforWOr-16-31-1

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: The BLM has not provided a compelling reason for moving away from the Northwest Forest Plan, a strategy which has been supported in the courts and has provided a unified, comprehensive approach to forest management in our region.

Issue Number: PP-OR-RMPforWOr-16-31-4

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: We are alarmed that

streamside buffers and Riparian Reserves have been reduced by roughly half in the RMP. The BLM did not adequately

rationalize this extreme departure from the Aquatic Conservation Strategy (ACS) under the Northwest Forest Plan

Summary:

The Purpose and Need of the Western Oregon PRMP/FEIS is to provide a sustained yield of timber, conserve and recover Threatened and Endangered species, provide clean water, restore fire-adapted ecosystems, provide recreation opportunities, and coordinate the management of lands surrounding the Coquille Forest with the Coquille Tribe. The protesters state that the Purpose and Need of this PRMP/FEIS has not been met because the plan:

- failed to include alternatives that address the purposes of the Oregon and California Railroad Grant;
- illegally restricted the range of alternatives...fails to identify revenue for counties as an objective;
- has misconstrued its legal mandate as one that requires an increase in logging/timber production;
- is arbitrary and contrary to law/based on unstated and unanalyzed needs;
- is now trying to narrow the purpose and need...by asserting that its wildlife conservation mandate is somehow narrower than it was in 1994;
- will directly inhibit the purpose of the Resource Management Plan to “restore fire-adapted ecosystems;
- failed to incorporate carbon storage into its purpose and need;
- is unlawfully narrow/illegal; and
- has not provided a compelling reason for moving away from the Northwest Forest Plan.

Response:

The BLM has properly justified the agency’s purpose and need in the Western Oregon PRMP/FEIS. The NEPA document must briefly specify the underlying purpose and need to which the agency is responding (40 CFR 1502.13). The analysis of alternatives is guided by the agency’s purpose and need. Agencies have considerable discretion to define the purpose and need of a project (*City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986)). The BLM must choose purposes that are reasonable (*Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). Agencies, in determining what a reasonable purpose is, must look at the factors relevant to the definition of the purpose (e.g., Congressional directives, statutory authority, the specific needs and goals of parties involved in the sanction of a specific plan). *Id.* (internal citations omitted). The purpose and need do not need to be objectively verifiable or supported by scientifically verifiable evidence, and the NEPA document does not need to prove that a project serves a particular purpose or that there exists a particular need for the project. *County of Bergen v. Dole*, 620 F.Supp. 1009, 1041-43, 1058-59 (D. N.J. 1985), *aff’d*, 800 F.2d 1130 (3rd Cir. 1986).

...failed to include alternatives that address the purposes of the Oregon and California Railroad Grant...

The O&C Act provides the legal authority to the Secretary of the Interior for management of the O&C lands. The O&C Act requires that O&C lands “classified as timberlands ... shall be managed ... for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal [sic] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities” (43 USC 1181a) (PRMP/FEIS, p. 14). The Purpose and Need for the Western Oregon PRMP/FEIS is to produce a sustained-yield of timber and conserve and recover Threatened and Endangered species (PRMP/FEIS, pp. 6-7), amongst other objectives.

Harvesting timber on a sustained-yield basis ensures that the BLM will achieve the purposes of the O&C Act (PRMP/FEIS, p. 6). Declining populations of species now listed under the Endangered Species Act (16 USC 1531 et seq.) have caused the greatest reductions and instability in the BLM’s supply of timber in the past. Further population declines of listed species or new species listings would likely lead to additional reductions in timber harvest. Contributing to the conservation and recovery of listed species is essential to delivering a predictable supply of timber. Specifically, the BLM recognizes that providing large, contiguous blocks of late-successional forest and maintaining older and more structurally-complex multi-layered conifer forests are necessary components of the conservation and recovery of the northern spotted owl. Providing clean water is essential to the conservation and recovery of listed fish, and a failure to protect water quality would lead to restrictions that would further limit the BLM’s ability to provide a predictable supply of timber (PRMP/FEIS, p. 6).

While the O&C Act has precedence over FLMPA, it does not remove BLM’s statutory authority to produce a sustainable supply of timber. It is the discretion of the Secretary to decide how to balance the differing objectives; specifically, designating reserves to protect listed and potentially listed species to reduce conflict with the sustained-yield mandate of the O&C Act. The Purpose and Need statement defines the range of alternatives that will be analyzed in the planning process, because alternatives must respond to the purpose and need for an action to be considered reasonable (PRMP/FEIS, p. 5). Contrary to the Protesting Parties statement, all of the alternatives address the purposes of the O&C Act or they would not be included in the proposal. The alternatives were designed to achieve multiple purposes, one of which is the production of a sustained yield of timber. For the reasons stated above your protect point is without merit.

...illegally restricted the range of alternatives...fails to identify revenue for counties as an objective...

As stated in the PRMP/FEIS Response to Comments, Appendix W, the purpose of the action includes providing a sustained yield of timber. The purposes of the action do not include providing revenues to Oregon counties. The O&C Act directs the U.S. Government to distribute a portion of the receipts from timber sales on O&C lands to the counties with O&C lands. Historically, these distributions have occurred by operation of the authorizing statute, irrespective of the Purpose and Need statement of the Environmental Impact Statement supporting BLM’s Resource Management Plan. Historically, these distributions have occurred by operation of the authorizing statute, irrespective of the Purpose and Need statement of the Environmental Impact Statement supporting BLM’s Resource Management Plan. While this distribution of a portion of timber receipts is indisputably a requirement on the U.S. Government

under the O&C Act, as with BLM's previous RMP planning efforts, the purpose and need for this RMP revision does not specifically include providing revenues to counties (PRMP/FEIS, p. 1838). The BLM is directed by the O&C Act to provide a permanent source of timber supply...and contribute to the economic stability of local communities and industries (PRMP/FEIS, p. 14). The Purpose and Need for the RMP was designed to achieve these two objectives, in addition to the other objectives listed on pages 6-10 of the PRMP/FEIS. While revenue production was not specifically listed as an objective, it is a component part of and logical consequence of RMP implementation by virtue of the revenue distribution requirements of O&C Act.

...has misconstrued its legal mandate as one that requires an increase in logging/timber production...

As stated above, the O&C Act provides the legal authority to the Secretary of the Interior for management of the O&C lands (PRMP/FEIS, p. 14). The O&C Act requires that O&C lands classified as "timberlands...be managed...for permanent forest production...with the principle of sustained yield" (PRMP/FEIS, p. 14). The PRMP has stated that one of the purposes is to provide a sustained yield of timber (PRMP/FEIS, p. 6). Pages 6-10 of the PRMP/FEIS list 6 objectives for the RMP revision, of which sustained yield is one objective. Providing a sustained yield of timber is not synonymous with an increase in logging. The BLM has not misconstrued its legal mandate.

...is arbitrary and contrary to law/based on unstated and unanalyzed needs...

Appendix W of the PRMP/FEIS explains that the O&C Act does not establish a minimum harvest level, rather, the O&C Act requires the BLM to offer for sale annually "... not less than one-half billion feet board measure, or not less than the annual sustained-yield capacity when the same has been determined and declared ..." (PRMP/FEIS, p. 1855). Through the RMPs, the BLM will determine and declare the annual productive capacity for sustained yield timber production or allowable sale quantity (ASQ). The calculation of the ASQ is a direct output from the vegetation modeling analysis for each alternative and the PRMP and would vary based on the timing and intensity of timber harvest, silvicultural practices, and restrictions on timber harvest in the Harvest Land Base (PRMP/FEIS, p. 337). As noted above, the FLPMA specifically provides that if there is any conflict between its provisions and the O&C Act related to management of timber resources...the O&C Act prevails (i.e., takes precedence) (43 USC 1701 note (b)) (PRMP/FEIS, p. 6). The analysis in the PRMP explains that BLM is mandated by the O&C Act to determine and declare the annual sustained yield capacity or the ASQ. On pages 337-339 of the PRMP the BLM discusses the analytical vegetation modeling used to determine the sustained-yield capacity. The analysis within the PRMP/FEIS supports the ASQ declaration and discloses that when the multiple use mandates of the FLMPA and the O&C Act conflict, the O&C Act takes precedent. The Purpose and Need of the PRMP/FEIS was not established arbitrarily and is consistent with the multiple statutory authorities governing western Oregon lands, such as the O&C Act and FLMPA (PRMP/FEIS, pp. 13-14).

...is now trying to narrow the purpose and need...by asserting that its wildlife conservation mandate is somehow narrower than it was in 1994...

The Purpose and Need statement describes why the BLM is revising the 1995 RMPs and what outcomes the BLM intends the RMPs to achieve (PRMP/FEIS, p. 5). The PRMP/FEIS lists 6

purposes, one of which is the conservation and recovery of Threatened and Endangered species (PRMP/FEIS, pp. 6-10). There is no indication that the BLM asserted that its wildlife conservation mandate is narrower than it was in 1994. Rather, the BLM recognizes that providing large, contiguous blocks of late-successional forest and maintaining older and more structurally-complex multi-layered conifer forests are necessary components for the conservation and recovery of the northern spotted owl and to provide clean water, which is essential to the conservation and recovery of listed fish (PRMP/FEIS, p. 6). The Purpose and Need for the PRMP revision was broad enough to include providing a sustained yield of timber while also contributing to the conservation and recovery of Threatened and Endangered species, amongst other purposes.

...will directly inhibit the purpose of the Resource Management Plan to “restore fire-adapted ecosystems...

The Draft RMP/EIS included varied approaches to salvage harvest after disturbances such as wildfire (PRMP/FEIS, pp. 81-99). Under the Proposed RMP, salvage harvesting would be permissible to recover economic value or minimize economic loss only in the Harvest Land Base. The Proposed RMP prohibits salvage harvesting in Riparian Reserve and Late-Successional Reserve, except where necessary to protect public safety or to keep roads and other infrastructure clear of debris. Selecting an alternative that would prohibit salvage harvest on all lands, including the Harvest Land Base would not be reasonable because it would not respond to the purpose and need for the RMP revision. The Harvest Land Base has management objectives for sustained-yield timber production, which is how the alternatives respond to the purpose of the action to provide for a sustained yield of timber. It would be unreasonable to prohibit salvage harvest of timber after disturbances in a land use allocation dedicated to timber production (PRMP/FEIS, pp. 1901-1902). Specifically, foregoing the harvest of merchantable timber in a land use allocation dedicated for timber harvest would be a lost opportunity and would not make the most efficient utilization of timber resources within the Harvest Land Base. Previous analyses have shown that active management in the dry forest landscape of southern Oregon can positively influence fire risk and fire resiliency, thereby restoring fire-adapted ecosystems (2008 FEIS - PRMP/FEIS, p. 10). The bare assertion that any salvage logging and replanting will inhibit the restoration of fire-adapted ecosystems is not supported by the analysis contained in the FEIS for the PRMP.

...failed to incorporate carbon storage into its purpose and need...

As stated in Appendix W, Response to Comments, the BLM based the purpose and need for the RMP revision on the laws that apply to the BLM. The BLM has no specific legal mandate to address climate change and maximize carbon storage comparable to the statutory authorities reflected in the purpose and need for this RMP revision. The BLM has various climate-related policies, such as Executive Order 13653. This policy addresses topics related to greenhouse gas emissions and climate change, but does not direct the BLM to manage BLM-administered lands specifically for carbon storage. Managing for climate change and maximizing carbon storage are not part of the purpose and need for this RMP revision (PRMP/FEIS, pp. 1837-1838 and 103-104). The PRMP/FEIS analyzed the effects of the different alternatives and the Proposed RMP on carbon storage and greenhouse gas emissions, assessed climate change-related impacts, and considered potential effect of the proposed action in adapting to climate change (PRMP/FEIS, pp. 165-202 and Appendix G). This Proposed RMP/FEIS is consistent with relevant climate-

related policies to the extent they address topics within the scope of this planning effort (PRMP/FEIS, p. 104).

...is unlawfully narrow/illegal...

BLM incorporated the full range of its statutory authorities applicable to these western Oregon lands when crafting the P&N statement. The purpose and need for an action dictates the range of alternatives that must be analyzed, because action alternatives are not reasonable if they do not respond to the purpose and need for the action (USDI BLM 2008, pp. 35–36, 49–50) (PRMP/FEIS, p. 29). There are potentially endless variations in design features or combinations of different plan components. The range of alternatives considered in this PRMP/FEIS builds on the alternatives considered in the Draft RMP/EIS. The BLM designed the range of alternatives in the Draft RMP/EIS to span the full spectrum of alternatives that would respond to the purpose and need for the action. The BLM developed those alternatives to represent a range of overall management approaches. The BLM has developed the Proposed RMP from the alternatives considered in the Draft RMP/EIS, and the Proposed RMP represents a management approach that is within the spectrum of the alternatives analyzed in detail in the Draft RMP/EIS (PRMP/FEIS, p. 29). The BLM incorporated the full range of statutory authorities applicable to western Oregon lands when crafting the Purpose and Need statement (PRMP/FEIS, pp. 12-15). The BLM developed a reasonable range of alternatives that responded to the purpose and need for this RMP revision which is contrary to the assertion that a narrow purpose and need statement constrained the alternatives.

...has not provided a compelling reason for moving away from the Northwest Forest Plan...

The Northwest Forest Plan is not a statute or regulation. It did not change the authority of the BLM, provided under the FLPMA and its promulgating regulations, for amending or revising RMPs. The Northwest Forest Plan was a coordinated, multi-agency amendment to the then-current RMPs of the BLM and forest plans of the U.S. Forest Service. The Secretaries and the agencies retained authority provided by statutes and regulations to revise these plans in the future. The only provision the Northwest Forest Plan made concerning future amendments or modifications to those plans was that they would be “coordinated” through the “Regional Interagency Executive Committee and the Regional Ecosystem Office” (USDA FS and USDI BLM 1994a, p. 58). During this current RMP revision, the BLM coordinated with the Regional Interagency Executive Committee. Many of the agencies that are represented on the Regional Interagency Executive Committee are cooperating agencies in this RMP revision. Those cooperating agencies include the U.S. Forest Service, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Environmental Protection Agency (PRMP/FEIS, p. 20). The purpose and need for this RMP revision is different from the purpose and need for the Northwest Forest Plan. As such, the action alternatives and the Proposed RMP do not contain all elements of the Northwest Forest Plan (PRMP/FEIS, p. 21). The BLM conducted plan evaluations, which concluded that a plan revision is needed to address the changed circumstances and new information that has led to a substantial, long-term departure from the timber management outcomes predicted under the 1995 RMPs. Moreover, the BLM needs to revise existing plans to replace the 1995 RMPs’ land use allocations and management direction because of new scientific information and policies related to the northern spotted owl (PRMP/FEIS, p. xxiii). The

BLM has provided a reasoned and compelling rationale for moving away from the Northwest Forest Plan and is within its legal framework under the FLMPA.

The BLM has properly justified its Purpose and Need. The PRMP/FEIS documented the underlying Purpose and Need to which this RMP revision is responding. The analysis of alternatives was guided by the Purpose and Need (PRMP/FEIS, pp. 5-10). The BLM has discretion to define the Purpose and Need for a project as long as the purpose is reasonable. The BLM determined what a reasonable purpose was by reviewing relevant directives, statutory authorities, and the specific needs and goals of the parties involved. The Protesting Parties have not provided any new information or other reason to overturn the decision, and so the protests are denied on these points.

NEPA – Affected Environment

Issue Number: PP-OR-RMPforWOr-16-11-36

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The above response clearly shows that the BLM has selected a biased (i.e., “scaled up”) methodology that is unable to detect changes in peak flows because the scale of the analysis (plan level summary of all HUC 12, formerly 6th field watersheds) is, as the BLM itself admits, too large.

Issue Number: PP-OR-RMPforWOr-16-11-5

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: They do not present a separate detailed analysis of the “Affected Environment” (e.g., existing resource conditions that are already affected by past actions) which serves to obscure the current condition of resources under the environmental baseline, so as to make all the action alternatives appear less impactful. The BLM's mechanistic models also do this by crafting an improper baseline prior to running the models and conducting the analysis.

Issue Number: PP-OR-RMPforWOr-16-11-7

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM merges the “Affected Environment” section of a typical EIS out of existence which allows them to narrowly identify only those aspects of the environment that they want to analyze.

Issue Number: PP-OR-RMPforWOr-16-11-8

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The last sentence of the above is disingenuous, as it allows BLM to move quickly into a discussion of “methods” without framing all the resource issues of concern in the affected environment. The purpose of the “Affected Environment” section in NEPA is to fully describe all issues and resource concerns that occur presently on the landscape, so as not to miss any type of impact as well as to inform cumulative impacts analysis.

Issue Number: PP-OR-RMPforWOr-16-46-9

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: This FEIS, through the use of misused and undefined terminology, fails to present to the public a cohesive plan that will meet this mandate. Within the greater failure is a failure to present a true and accurate picture of current

circumstances, utilize existing documentation fully, and make projections based on accurate current assessments.

Issue Number: PP-OR-RMPforWOr-16-12-72

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director's omission to require each district to make substantial reductions of road and trail related sediment on an annual basis is wrong. The FEIS is wrong because it failed to disclose the ongoing degradation of stream habitat due to sediment pollution and its serious adverse effect on ESA listed Coho salmon. The FEIS is wrong because it failed to alert the State Director about the continuing loss of viability of SONNC Coho on planning area and decision area lands.

Issue Number: PP-OR-RMPforWOr-16-12-79

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director's omission to require Medford District and Klamath Falls Resource Areas to develop substantial protections of riparian reserves from livestock grazing impacts is wrong. The FEIS is wrong because it failed to adequately disclose the ongoing degradation of stream habitat due to livestock grazing and its serious adverse effect on ESA listed Coho salmon (Medford District) and to a lesser extent adverse grazing impacts on ESA listed short-nose sucker (Klamath Falls Field Office).

Summary:

The Affected Environment section within the Western Oregon PRMP/FEIS is inadequate and lacks needed information.

Response:

The BLM considered all relevant, appropriate, and available information in the Western Oregon PRMP/FEIS. The BLM must use information of high quality and scientific integrity in its NEPA analyses (40 CFR 1500.1(b) and 1502.24). NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)).

There is no required format for an EIS, so long as the necessary and relevant information is included in a manner which encourages good analysis and presentation of the alternatives (40 CFR 1502.10). The BLM addressed this issue further in the PRMP/FEIS, Appendix W, p. 1868. The EIS is to describe the area affected by the alternatives, in a succinct description no longer than is needed to understand the effects (*Id.* at 1502.15). It is defined and limited by the identified issues (BLM NEPA Handbook, H-1790-1, p. 53).

The purpose of the affected environment section is not to describe the condition and trend of all resources, but rather to describe the condition and trend of resources related to the identified issues. Consistent with CEQ regulations and the NEPA handbook, the BLM used the results of scoping and public involvement to define the issues for analysis and structured the analysis in the PRMP/FEIS by these defined issues (PRMP/FEIS, p. 1868) The BLM combined the affected

environment and environmental consequences into a single chapter to provide all of the relevant information on a resource issue in a single discussion (PRMP/FEIS, p. 115). The BLM identified issues for each resource; issues are “truly significant to the action in question” and are necessary to make a reasoned choice between the alternatives. The BLM is not required to identify issues beyond what is relevant to the analysis and the protesters fail to make an affirmative showing as to how BLM’s identification of issues is in error.

The protesters specifically object to the description of the Affected Environment for fisheries in the PRMP/FEIS, asserting that the BLM violated NEPA in failing to disclose ongoing problems with livestock grazing and the current condition of the Southern Oregon/Northern California Coho salmon. The BLM identified three issues on which to base the analysis of the alternatives on fisheries; these issues were in regards to small and large functional wood, sediment delivery, and stream shading on fish-bearing and non-fish-bearing streams (PRMP/FEIS, pp. 282, 297, 300). The BLM acknowledged that heavy grazing can have adverse impact on riparian vegetation and potentially create sources of sediment (PRMP/FEIS, p. 299).

The BLM described issues considered but not analyzed in detail for the fisheries section in the PRMP/FEIS. The BLM did not analyze the effects of livestock grazing on the short-nose sucker, because there would be no measureable difference in effects under the alternatives or the Proposed RMP (PRMP/FEIS, p. 302). The PRMP/FEIS included the current status, as listed under the ESA, of the Southern Oregon/Northern California Coho salmon (PRMP/FEIS, p. 278). The protester fails to demonstrate how this is insufficient and in violation of NEPA.

The protester indicates a preference for additional information in the PRMP/FEIS regarding the effects of grazing, but fails to demonstrate that such information is reasonably related to the identified issues or is necessary for a reasoned choice between alternatives.

Consistent with CEQ regulation and the NEPA handbook, the BLM considered all relevant, appropriate, and available information in the PRMP/FEIS in the preparation of the affected environment section and identification of issues.

NEPA – Range of Alternatives

Issue Number: PP-OR-RMPforWOr-16-04-12

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The BLM failed to analyze adequate alternatives in the PRMP. No alternative closes OHV use in areas documented to have been subjected to “considerable adverse effects.” All alternatives maintain the vast majority of the status quo for OHV use including unauthorized, user-created trails that are causing considerable adverse effects. No alternative addresses the issue of OHV use on lands, water, wildlife, ESA species, fisheries, botany, and user-conflicts between motorized and non-motorized users. These issues were not thoroughly analyzed and impacts were not adequately disclosed to the public.

Issue Number: PP-OR-RMPforWOr-16-08-11

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: Failure to develop any alternative that effectively reduces the stand level fire hazard within Late Successional Reserves.

Issue Number: PP-OR-RMPforWOr-16-08-2

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: Unfortunately, the BLM has developed alternatives that would all unlawfully reserve O & C timberlands from timber harvest and designate them for

secondary purposes that do not meet or only tangentially touch on the purposes of the O&C Grant lands

Issue Number: PP-OR-RMPforWOr-16-08-4

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The statement of purpose and need, as well as the range of alternatives, violate the planning criteria of FLPMA14 and the requirements of NEPA by unreasonably defining the alternatives in a manner that artificially narrows the decision space. The true decision space is in the context of the Oregon and California Railroad Grant; the Act of August 28, 1937 (50 Stat. 874; 43 USC §1181a-1181j); and, the Act of May 24, 1939 (53 Stat. 753) insofar as they relate to management of timber resources. The failure to include alternatives that address the purposes of the Oregon and California Railroad Grant has not only pre-ordained the decision but has also limited the public's ability to knowingly comment on the proposed actions in the context of the O & C Railroad Grant purposes.

Issue Number: PP-OR-RMPforWOr-16-08-7

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: By designing alternatives that are driven by regulatory agency guidelines which have elevated secondary purposes over the primary purpose, the BLM fails to set forth and explore a range of alternatives that allow for fulfillment of the Railroad Grant.

Issue Number: PP-OR-RMPforWOr-16-09-9

Organization: Association of O&C Counties

Protester: Kevin Davis, Attorney

Issue Excerpt Text: With all action alternatives clustered around preservation-oriented outcomes, there will be no examination of a reasonable range of alternatives that would disclose how to efficiently produce acceptable levels of environmental protections, while simultaneously producing economic benefits required by the O&C Act. This skewed and limited range of alternatives deprives the agency and the public of both information and meaningful choices, in violation of the National Environmental Policy Act. The Association of O&C Counties asks the BLM to stop and reconsider, as the path chosen is one of inevitable conflict between the BLM and the Counties that are intended by law to benefit from management of the O&C lands.”

Issue Number: PP-OR-RMPforWOr-16-10-1

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The EIS fails to provide an explanation of why the increase in logging is economically justified and why the Natural Selection, No Harvest, Small Diameter, and Maximize Carbon Storage alternatives were rejected.

Issue Number: PP-OR-RMPforWOr-16-12-139

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The PRMP also is contrary to law because its emphasis on timber production will destabilize communities and industries in violation of the O&C Act and has led BLM to develop and consider an inadequate range of alternatives in the FEIS/PRMP.

Issue Number: PP-OR-RMPforWOr-16-12-155

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In the FEIS the BLM failed to consider and disclosed reasonable alternative approaches to salvage logging in timber management areas as modeled on the recommendations of the Beschta report. Specifically:

- prohibit post-fire logging AND roadbuilding on all sensitive sites, including: severely burned areas (areas with litter destruction), on erosive soils, on fragile soils, in roadless/unroaded areas, in riparian areas, on steep slopes, and any site where accelerated erosion is possible. We would add: Late-Successional and Riparian Reserves, and protective land allocations or designations including Botanical and Scenic River Areas;
 - protect all live trees;
 - protect all old snags over 150 years old;
 - protect all large snags over 20 inches dbh;
 - protect at least 50% of each size class of dead trees less than 20 inches dbh.
- 122 BLM also failed to fully consider and analyze reasonable science-based alternatives for salvage logging that address the recommendations in at least the following publications:
- Society for Conservation Biology Scientific Panel on Fire in Western U.S. Forests. Reed F. Noss (editor), Jerry F. Franklin, William Baker, Tania Schoennagel, and Peter B. Moyle.

Ecological Science Relevant to Management Policies for Fire-prone Forests of the Western United States. February 24, 2006. <http://www.conservationbiology.org/sections/namerica/FireWhitepaper.pdf>.

• See also Reed F. Noss (editor), Jerry F. Franklin, William L. Baker, Tania Schoennagel, and Peter B. Moyle. 2006. Ecology and Management of Fire-prone Forests of the Western United States. Society for Conservation Biology Scientific Panel on Fire in Western U.S. Forests.

Issue Number: PP-OR-RMPforWOr-16-12-169

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM's failure to disclose or evaluate the implications of this major landslide risk in light of the available evidence is arbitrary and contrary to NEPA. All of the BLM developed action alternatives in the FEIS and the proposed RMP call for increasing the size of the transportation network despite the fact that the BLM already has a \$317 million-dollar deferred road maintenance backlog of which \$127 million is within the Medford District. Hence the range of action alternatives is arbitrarily narrow and excludes consideration of a reasonable action alternative that would sharply limit or avoid altogether new road construction.

Issue Number: PP-OR-RMPforWOr-16-12-17

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to consider a reasonable range of alternatives in the FEIS/PRMP. First, BLM explains that it did not consider an alternative that would

examine the status quo, which is implementation of the Northwest Forest Plan as amended and currently implemented.

Issue Number: PP-OR-RMPforWOr-16-12-18

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The No Action alternative provides a benchmark to compare outputs and effects, even though this alternative does not meet the purpose and need of the project. Because of the inherent unsustainability and variability of current practices, the BLM cannot project their implementation into the future; thus, analyzing continuation of the current practices would not serve the essential function of the No Action alternative of providing a baseline for comparison of outputs and effects. 61 This rationale is arbitrary and capricious. While it may be true that the BLM's timber program has departed from timber harvest estimates in existing RMPs or even the NWFP, this does not mean that BLM cannot model or predict how existing RMPs will affect the environment, or how they are currently being implemented.

Issue Number: PP-OR-RMPforWOr-16-12-19

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: the public cannot assess the individual components of each alternative. Instead, the public is left with the impression that more timber harvest means less environmental protection, which, while likely true to some extent, does not allow for the public to have a true understanding of the actual differences among the alternatives, or what combination

of particular aspects of particular alternatives have what particular environmental effects. Moreover, for some resources the FEIS simply describes environmental consequences in a “relative” fashion, stating that impacts would be “greater” for some alternatives than for others.

Issue Number: PP-OR-RMPforWOr-16-12-192

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to consider alternatives that provide increased protection and restoration of spotted owl habitat in areas managed by BLM.

Issue Number: PP-OR-RMPforWOr-16-12-20

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP approach to developing and describing the relative effects of the alternatives does not allow the public to clearly understand the actual differences among alternatives in an absolute sense and provide meaningful input to the decision-maker about a reasoned choice among them.

Issue Number: PP-OR-RMPforWOr-16-12-42

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM is making the mistake of comparing carbon “before and after” logging instead of the more accurate, “with and without” the project. Our comments implored BLM to avoid “before-

and-after” carbon accounting. BLM cannot say that logging is carbon neutral because the forest is capturing more carbon than is being removed across the landscape. This is highly misleading. The proper analysis requires comparison of the amount of carbon with logging under the PRMP and without logging. A no-logging alternative will allow more forests to regrow and capture more carbon. Logging represents a forgone opportunity to store carbon in the forest and thus represents harm to the climate. An analysis like this is not only required to accurately determine the effect of vegetation removal on forest carbon storage but it is also consistent with NEPA requirements to compare action and no action alternatives.

Issue Number: PP-OR-RMPforWOr-16-12-44

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM fails to fully recognize the climate benefits of an alternative that focuses on thinning young stands and conserving older stands. A reasoned choice among alternatives requires BLM to make a distinction between the greater harm of logging older forests and the relative lesser climate impacts of thinning young forests.

Issue Number: PP-OR-RMPforWOr-16-12-62

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP violates NEPA because it failed to analyze an alternative or sub- alternative that would continue the existing two tree width reserve with a 120’ no cut buffer.

Issue Number: PP-OR-RMPforWOr-16-12-63

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Neither the FEIS nor Reeves et al. in press fully evaluated the need for a two-tree width reserve to provide wood and shade over the next 100-200 years.

Issue Number: PP-OR-RMPforWOr-16-13-32

Organization: Klamath Siskiyou Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: In regards to ORV area designations, the BLM has not met its obligation to consider a reasonable range of alternatives. As stated in the Proposed RMP, “[e]ven under the most restrictive alternative for OHV use (Alternative C), the BLM would close less than 1 percent of BLM-administered lands in the decision area to OHV use. This is the same analysis that was overturned by the district court and upheld by the 9th Circuit Court of Appeals five years ago for the BLM RMP for Southeastern Oregon.

Issue Number: PP-OR-RMPforWOr-16-14-6

Organization: American Bird Conservancy

Protester: Steve Holmer

Issue Excerpt Text: Inadequate Range of Alternatives - One Should Have Built on the Northwest Forest Plan. The range of alternatives in the draft was unduly narrow in violation of the National Environmental Policy Act. And, of the four draft alternatives, none were sufficiently protective of listed species in violation of

the Endangered Species Act. The Northwest Forest Plan provides the best model for managing forests on BLM lands in Oregon. The Aquatic Conservation Strategy, Late-Successional Reserves, and the Survey and Manage program are essential elements of the plan. The range of alternatives should have been expanded to include an alternative that builds upon the Northwest Forest Plan. All the core science and rationale supporting adoption of the Northwest Forest Plan remain sound.

New information since the plan was adopted 20 years ago indicates a need for more forest conservation, not more logging. Global climate change is a new and significant issue that requires BLM to consider an alternative that emphasizes carbon storage by protecting all mature and old-growth forests and allow young forests more time to grow. Increased logging will accelerate the transfer of carbon from the forest to the atmosphere, while increased conservation will keep carbon out of the atmosphere and help mitigate global warming and ocean acidification.

In addition, the recent invasion and expansion of the range of the Barred Owl, which competes with Northern Spotted Owls for both territory and food, requires that BLM consider an alternative that protects all suitable nesting, roosting, foraging habitat. This will increase the chances that the two owls can co-exist instead of competitively exclude each other, and contribute to meeting the conservation requirements of the Endangered Species Act.

The conservation alternative should also have analyzed the benefits of expanding habitat conservation for the threatened Marbled Murrelet. The existing network of Late-Successional Reserves on federal lands in the Pacific Northwest that was designated in 1994 are insufficient to maintain the

Marbled Murrelet population - the 2009 five-year status review is predicting extinction for the population outside of the Puget Sound area within 100 years. There is also inadequate mitigation of the apparent negative effects of fragmentation and human disturbance to nest survival.

Issue Number: PP-OR-RMPforWOr-16-20-12

Organization: American Forest Reserve Council

Protester: Travis Joseph

Issue Excerpt Text: The FEIS does not examine all reasonable alternatives.

Issue Number: PP-OR-RMPforWOr-16-20-15

Organization: American Forest Reserve Council

Protester: Travis Joseph

Issue Excerpt Text: BLM should have considered an alternative without any no-harvest reserves that complies with the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-20-16

Organization: American Forest Reserve Council

Protester: Travis Joseph

Issue Excerpt Text: BLM's improper purpose and need led it to delete many alternatives that should have been retained.

Issue Number: PP-OR-RMPforWOr-16-30-7

Organization: Josephine County

Protester: Wally Hicks

Issue Excerpt Text: Failure to analyze alternatives designed to achieve the objectives and requirements of the O&C Act as stated above, while simultaneously achieving the objectives of the Endangered Species Act, all in violation of NEPA and the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-35-4

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The BLM did not adequately assess the viability and sustainability of the Natural Selection Alternative with regards to meeting the multiple use intent of the O&C Act. The NSA is the only available alternative that is truly sustainable in terms of timber production and non-timber forest production. The NSA produces timber at the actual rate that the forest produces it and by only harvesting the dead and dying trees, it maximizes timber production rather than cutting green trees prematurely before reaching their productive capacity. It is the only alternative that inherently eliminates the debate about what constitutes over cutting by allowing the forest to determine the level of sustainability. By eliminating over cutting, the negative effects of deforestation are nonexistent. By only taking the dead and dying trees, there will not be irreversible mistakes made that impact current and future generations.

Issue Number: PP-OR-RMPforWOr-16-35-6

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The BLM violated NEPA by failing to consider alternatives that

would better meet the stated purpose and need. The SLM did not assess the No Action alternative or the Natural Selection Alternative (NSA).

Issue Number: PP-OR-RMPforWOr-16-35-9

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The Natural Selection Alternative is the only available alternative that complies with all current environmental protection laws: i.e. the O&C Act, the Endangered Species Act, the Clean Water Act, the Northwest Forest Plan, and the Clean Air Act.

Issue Number: PP-OR-RMPforWOr-16-38-1

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: BLM has failed to produce a reasonable range of alternatives and therefore cannot meet all of its legal obligations to protect clean water and wildlife habitat.

Issue Number: PP-OR-RMPforWOr-16-38-3

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The DEIS fails to provide an explanation of why...the no-harvest and natural selection alternatives were rejected when they represent the only alternatives that can fulfill statutory sideboards that specify under what conditions BLM timber should be offered for sale.

Issue Number: PP-OR-RMPforWOr-16-38-4

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The WOPR failed to include all or parts of the Natural Selection Alternative as an alternative in the DEIS.

Issue Number: PP-OR-RMPforWOr-16-38-5

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The BLM decision makers arbitrarily and capriciously eliminated the Natural Selection Alternative because they falsely claim the NSA wouldn't produce wood for humans indefinitely with "sustained yield".

Issue Number: PP-OR-RMPforWOr-16-38-9

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The BLM received significant comments providing credible scientific evidence that the NSA represents the best alternative to manage fire risks. Despite the extensive comments on this point, the BLM dismissed the issue without disclosure or discussion within the FEIS.

Issue Number: PP-OR-RMPforWOr-16-14-5

Organization: American Bird Conservancy

Protester: Steve Holmer

Issue Excerpt Text: The No Action Alternative violates the National Environmental Policy Act because it is based on the Northwest Forest Plan as written, as opposed to how it actually being

implemented in 2016. As a result, it does not offer a useful baseline for analysis, or for comparison with the proposed RMP.

Issue Number: PP-OR-RMPforWOr-16-11-4

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Inaccurate Portrayal of No Action invalidates BLM's comparison of the alternatives. Merging of Affected Environment and Environmental Consequences sections contributes to the BLM's obfuscation of the impacts of the proposed action. The BLM's portrayal of the No Action alternative is incorrect and serves to confuse the public by including impacts that are not supposed to be allowed under No Action (see e.g., ROD p. B-17 and ROD p. B-3]) resulting in a skewed interpretation of the environmental baseline when comparing impacts of the action alternatives to the No Action alternative.

Issue Number: PP-OR-RMPforWOr-16-11-3

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Further, BLM has ignored the specific directions in the NWFP ROD (all S&Gs described above) that apply to the No-Action Alternative. BLM's faulty implementation of the full suite of protective ACS provisions of the No Action alternative

over the past 20 years has been noted in the comments to the Draft RMPEIS and it appears that BLM in this Final RMPEIS attempts to justify their past interpretations of the existing ACS provisions of the No Action alternative in order to make the impacts of other action alternatives seem minor in comparison. In NEPA this flaw is called "hiding impacts in the baseline".

Issue Number: PP-OR-RMPforWOr-16-04-8

Organization: Klamath Forest Alliance
Protester: Luke Ruediger

Issue Excerpt Text: Without a current inventory of "existing" routes the designation cannot be enforced and OHV users will continue creating unauthorized trails and claim they were existing prior to the approval of the FEIS and PRMP. The BLM will have no accurate or valid process to dispute the existence of these trails prior to approval of the ROD for the PRMP.

Issue Number: PP-OR-RMPforWOr-16-12-22

Organization: Earthjustice
Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM's internal agency reward system, which is not described or disclosed in the FEIS/PRMP, leads to unintended and undisclosed consequences. Unreasonably high timber targets combined with highly discretionary standards and guidelines, see infra (discussing these flaws), will lead to more significant environmental effects than the FEIS describes and a failure to attain environmental objectives.

Summary:

The Western Oregon PRMP/FEIS failed to adequately consider a range of reasonable alternatives by not analyzing in detail alternatives relating to:

- the No Action Alternative;
- OHV use;
- stand level fire hazards within the Late Successional Reserve;
- the O&C Act;
- Natural Selection, No Harvest, Small Diameter, Maximize Carbon Storage, and Larger Riparian Reserve buffer;
- new road construction; and
- ESA-listed species and expanding habitat conservation.

Response:

The BLM has included an adequate range of alternatives in the Western Oregon PRMP/FEIS. The BLM is required to include a discussion of a range of reasonable alternatives to the proposed action, alternatives which are technically and economically feasible and which meet the purpose and need, and which have a lesser environmental impact (42 U.S.C 4332(2)(C); 40 CFR 1502.14; 40 CFR 1508.9(b); 43 C.F.R 46.420(b)). No specific or minimum number of alternatives is required (43 CFR 46.415(b); *Native Ecosystems Council v. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005)). A “rule of reason” standard guides the range of alternatives, and does not require the BLM to include or evaluate every conceivable possible alternative (*Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004); *Vermont Yankee Corp. v. NRDC, Inc.*, 435 U.S. 519, 551 (1978); *Pac. Coast Fed’n of Fishermen’s Ass’ns. v. Blank*, 693 F.3d 1084, 1099 (9th Cir. 2012); *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1181(9th Cir. 1990)). The BLM is not required to consider a range of alternatives that extends beyond those reasonably related to the purpose of the project (*City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986)).

The BLM developed a range of alternatives in the PRMP/FEIS to span the full spectrum of alternatives that would respond to the Purpose and Need for action (PRMP/FEIS, p. 29). The Purpose and Need for action dictates the range of alternatives that must be analyzed, because action alternatives are not reasonable if they do not respond to the Purpose and Need for action (PRMP/FEIS, p. 29; BLM NEPA Handbook, H-1970-1, pp. 35-36, 49-50).

The PRMP/FEIS analyzed four distinct alternatives in detail, which are described in Chapter 2 – Alternatives (PRMP/FEIS, pp. 29-99). The alternatives cover the full spectrum by representing a range of overall management approaches to meet the purpose and need, rather than providing gradations in design features (*Id. at 29*).

No Action Alternative

The protesters assert that the BLM violated NEPA by failing to present an adequate No Action alternative, because the No Action alternative is based on the 1995 RMPs as written and not as implemented. CEQ guidance explains that, for plans such the RMP plan revision, No Action means there is no change from current management direction or level of management intensity (CEQ 40 Questions; PRMP/FEIS, pp. 29-30). The BLM addressed this issue in the response to

comments. “In the case of this RMP revision, the implementation of the 1995 RMPs has not been consistent with the assumptions of the 1995 RMPs, as detailed in the BLM plan evaluations (USDI BLM 2012)” (PRMP/FEIS, Appendix W, p. 1851).

As explained in the PRMP/FEIS, the long-standing failure to implement the 1995 RMPs as written is part of the stated need for the RMP revision (PRMP/FEIS, p. 5). The PRMP/FEIS further explained that the BLM cannot analyze continuation of the current practices as the No Action alternative (PRMP/FEIS pp. 100-101). “Because of the inherent unsustainability and variability of current practices, the BLM cannot project their implementation into the future; thus, analyzing continuation of the current practices would not serve the essential function of the No Action alternative of providing a baseline for comparison to the action alternative” (PRMP/FEIS, p. 100).

The BLM cannot select any particular ‘snapshot’ from a specific year (or set of year) as representative of the 1995 RMPs as implemented; any such attempt would be arbitrary, since past practices provides no rational basis upon which to project the continuation of practices at any given point in time into the future (PRMP/FEIS, p. 1851). The No Action alternative explicitly represents no change from the current management direction and thus constitutes the appropriate benchmark for comparison to the action alternatives (PRMP/FEIS, p. 1851; CEQ 40 Questions). The BLM has satisfied NEPA in the presentation of the No Action alternative. While BLM has accounted for the 1995 RMPs “as implemented” by including the effects of RMP implementation within the environmental baseline for all resource issues, including an additional alternative that considers the 1995 RMPs “as implemented” is not feasible and would not be reasonable.

OHV use

The protesters assert that the BLM violated NEPA by failing to consider an alternative that closes specific routes to OHV use. It is outside the scope of this planning effort to make site-specific route designations at this time. As addressed in the PRMP/FEIS, current BLM policy allows for the deferral of implementation-level transportation planning. The BLM is deferring such planning due to the size and complexity of the area (PRMP/FEIS, p. 776).

Additionally, the BLM described the process of travel management planning in the PRMP/FEIS (Appendix X, p. 1999). The BLM may delineate Travel Management Areas within these broader land use planning level designations for public motorized access to address particular concerns and prescribe specific management actions for a defined geographic area. The BLM will make final route designations within the decision area in comprehensive, interdisciplinary Travel and Transportation Management Plans, scheduled to be completed within five years after the completion of the western Oregon RMPs. *Id.* A public outreach strategy to engage fully all interested stakeholders would be incorporated into future travel management plans (PRMP/FEIS, Appendix Q, p. 1607). Until implementation-level Travel Management Planning is complete, routes and trails would be managed in accordance with their area designation of closed or limited to existing routes for public motorized travel activities.

All action alternatives and the PRMP would increase the acres of areas *closed* to public motorized access (which includes OHV) and decrease the acres of areas *open* compared to the

No Action alternative (PRMP/FEIS, p. 775). Due to the size and complexity of the planning area, the BLM appropriately has deferred travel management planning. Therefore, an alternative that closes specific routes in the planning area is not necessary at this time.

Stand level fire hazards within the Late Successional Reserve

The protester asserts that the BLM violated NEPA by failing to consider an alternative that reduces stand level fire hazard within the Riparian Reserves. The BLM addressed concerns regarding this point in the response to comments in the PRMP/FEIS (Appendix W, pp. 1858-1860). The alternatives considered in the PRMP/EIS do not vary the approach to natural hazardous fuels reduction treatments or wildfire management. The BLM has no basis for an alternate approach to treating natural hazardous fuels that would result in different effects on stand-level fire resistance, fire hazard, or landscape fire resilience. The PRMP/EIS explained that increasing landscape-level fire resilience and stand-level fire resistance and decreasing stand-level fire hazard would increase the effectiveness of hazardous fuels treatments, and the alternatives do consider a range of approaches related to resilience, resistance, and hazard (PRMP/FEIS, pp. 270-271).

Any difference in wildfire management because of wildfire reoccurring in such stands in the Late-Successional Reserve and posing operational challenges in wildfire management would be small in extent, immeasurable, and speculative (PRMP/FEIS, p. 1859). The BLM is not required to consider alternatives if its implementation is remote or speculative (PRMP/FEIS, p. 99).

O&C Act

The protesters assert that the range of alternatives is inconsistent with the O&C Act because of the inclusion of reserve areas, environmental protections, and socioeconomic factors. The BLM addressed the consistency of the O&C Act in the PRMP/FEIS. The Act mandates that O&C lands be “managed for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities” (43 USC 1181a; PRMP/FEIS, p. 6).

The protest perpetuates a simplified interpretation of the O&C Act in stating that reserved areas are inconsistent with the O&C Act and the principle of sustained yield. The O&C Act does not require a specific harvest level, nor require that all lands be available for harvest. When implementing the O&C Act, the BLM must do so in full compliance with subsequent laws (such as the ESA) that direct how the BLM accomplishes the statutory direction (PRMP/FEIS, pp. 1833-1834). An alternative that maximizes revenue and excludes no-harvest reserve areas would not be reasonable, because it would not meet the purpose and need, which includes contributing to the conservation and recovery of threatened and endangered species, providing clean water, and restoring fire-adapted ecosystems (PRMP/FEIS, pp. 105, 1853).

Another protester characterizes the PRMP/FEIS as being “timber centric” and asserts that the alternatives will contribute to instability in local communities. The BLM disagrees. As addressed in the PRMP/FEIS, Appendix W, alternatives in the PRMP/FEIS present an array of timber harvest levels that range above and below current levels and cannot be characterized as an

increase in logging or emphasis on timber. PRMP/FEIS, p. 1852. The protester makes assertions and predictions related to the influence of timber production on communities, but provides no information different than that used in the analysis.

No Timber Harvest, Natural Selection Alternative – Harvest Only Dead and Dying Trees, Harvest Only Small-diameter trees with a One-time Entry, Maximize Carbon Storage, Protect All Nesting, Roosting, and Foraging Habitat for the Northern Spotted Owl, and Increase Riparian Reserve Widths

The protesters assert that the BLM violated NEPA by failing to analyze in detail several alternatives. In addition to the four alternatives that were analyzed in detail, the PRMP/FEIS includes a description of alternatives considered, but not analyzed in detail (PRMP/FEIS, pp. 99-108). As explained in the BLM NEPA Handbook (H-1970-1, p. 52), the BLM may eliminate an alternative from detailed analysis if it is not reasonable. An alternative need not be analyzed in detail if–

- It does not meet the purpose and need;
- It is technically or economically infeasible;
- It is inconsistent with the basic policy objectives for the management of the area;
- Its implementation is remote or speculative;
- It is substantially similar to an alternative being considered in detail; or
- It would have substantially similar effects to an alternative being considered in detail.

The PRMP/FEIS provides rationale for why each of the aforementioned alternatives was not analyzed in detail (pp. 99-108, 1851-1860). The BLM removed these alternatives from detailed analysis if the alternative: failed to meet the purpose and need and are inconsistent with basic policy objectives (No Timber Harvest, Natural Selection Alternative, Harvest Only Small-diameter trees with a One-time Entry, Maximize Carbon Storage), would be substantially similar to another alternative being considered in detail (Increase Riparian Reserve Widths), or would have substantially similar effects to an alternative being considered in detail (Protect All Nesting, Roosting, and Foraging Habitat for the Northern Spotted Owl). The protester has not shown BLM's evaluation of these alternatives to be in error.

Alternative Approaches to Salvage in the Harvest Land Base

The protesters assert that the BLM violated NEPA by failing to develop an alternative that considers alternative approaches to salvage in the Harvest Land Base. The protesters provide recommendations for restricting salvage in the Harvest Land Base that contradict specific statutory and policy requirements for the planning area. Pursuant to the policies, objectives, and statutory authority of the O&C Act, the management objectives for the Harvest Land Base focus on timber production, and specifically include recovering economic value from timber harvested after disturbance, such as a fire, windstorm, disease, or insect infestations. Therefore, it would be inconsistent with the management objectives to prohibit timber salvage in the Harvest Land Base (PRMP/FEIS, pp. 42, 1862). The BLM is not required to consider alternatives that are inconsistent with basic policy objectives for the management of the area.

Limiting New Road Construction

The protesters assert that the BLM violated NEPA by failing to develop an alternative that limits or avoid new road construction. The PRMP/FEIS describes in detail the existing infrastructure in the planning area and the analytical assumptions that served as the basis for analysis. Estimated new road construction varies by alternative, but is generally lower than that of the No Action alternative (PRMP/FEIS, pp. 788-789). Much of the needed infrastructure was built decades ago; no management direction or specific target for road construction exists (PRMP/FEIS, p. 789). Construction of additional resource roads is a necessity in order to implement the full complement of timber sales needed to achieve the purpose and need of sustained yield timber management. An alternative void of new road construction would impractically and unreasonably limit the BLM's ability to meet the purpose and need to provide a sustainable supply of timber; thus, it is not a reasonable alternative and does not need to be analyzed in detail (PRMP/FEIS, p. 99).

Expanding Habitat Conservation for the Northern Spotted Owl and the Marbled Murrelet

The protesters claim that the range of alternatives is inadequate because the BLM failed to include an alternative that expanded protections for the northern spotted owl and the Marbled Murrelet. This alternative is substantially similar to another alternative considered but not analyzed in detail: Protect All Nesting, Roosting, and Foraging Habitat for the Northern Spotted Owl (PRMP/FEIS, p. 104). The BLM eliminated this alternative from detailed analysis because it would not be sufficiently different from Sub-alternative C. The protest fails to describe how the suggested alternative would be different enough to warrant a standalone analysis. As stated in the NEPA Handbook, alternatives need not be analyzed in detail if it is substantially similar to an alternative being considered in detail.

The BLM considered a reasonable range of alternatives in the PRMP/FEIS in full compliance with NEPA. Because the range of alternatives represents the full spectrum of reasonable alternatives to accomplishing the purpose and need for this RMP revision, the range of alternatives is appropriate.

NEPA – Best Available Information

Issue Number: PP-OR-RMPforWOr-16-02-1

Organization: Individual

Protester: Joseph Quinn

Issue Excerpt Text: Please accept this formal Protest of the failure of the BLM Planning Team for the Resource Management Plan for Western Oregon to acknowledge and correct the resource mapping errors on the Coos Bay Wagon Road BLM holding: Township 29S, Range 8W, Section 7, which lies within the administrative jurisdiction of the Roseburg District of the Bureau of Land Management.

Issue Number: PP-OR-RMPforWOr-16-09-6

Organization: Association of O&C Counties

Protester: Kevin Davis, Attorney

Issue Excerpt Text: The 2008 reference analysis was based on prescriptions to “manage most commercial lands for maximizing timber production” and resulted in a projected annual level totaling 1.2 billion board feet per year. This figure was cited in the current planning process by the BLM in its draft RMP/EIS at page 262 and again in the PRMP at page 341. The 2008 reference analysis was based on 2006 forest inventory data and obviously did not consider the most recent forest inventory data and other relevant new information and did not utilize harvest calculations that are commensurate with the management methods applied in alternatives considered by the BLM in the current planning process.

Issue Number: PP-OR-RMPforWOr-16-11-10

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Questionable and limited use of “New Science”. The RMP/EIS specifies that “new science” has been used in evaluating the relative impacts of the alternatives including the No Action alternative. This is not sufficiently the case. A significant amount of new aquatic science information and new journal publications (post 1994-5, i.e., post NWFP ROD and 1995 RMP revisions), including new scientific information and analyses regarding climate change, thermal, hydrologic, nutrient, and large wood recruitment impacts has been presented to the BLM (largely summarized in Frissell et al. 2014) but has not been utilized or considered. The BLM also relies on limited and/or invalid interpretations of aquatic science

Issue Number: PP-OR-RMPforWOr-16-11-11

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The Frissell et al. paper has been ignored by BLM in this plan revision.

Issue Number: PP-OR-RMPforWOr-16-11-18

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: What specifically is the “new science” or “new information”(if any) that BLM considered regarding Riparian Reserves, stream temperature/shade relationships, large wood recruitment, hydrology, and fisheries resources, or climate change impacts to fish and aquatic resources? It does not seem that BLM has done an adequate search for any of the new science in any of these areas of science inquiry, since 1994-5.

Issue Number: PP-OR-RMPforWOr-16-12-104

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM also makes an abrupt departure from an assumption in the DEIS that all vole sites are critical to persistence north of Highway 20. This was a key conclusion of the FWS’ warranted but precluded finding for the vole that was published recently and was the latest study of voles in Oregon. The BLM disavows this statement, but provides no rationale scientific or otherwise for making this about face. The BLM merely states that the status of voles in this area is unknown. This is insufficient – incorrectly asserting ignorance does not excuse the failure to take a hard look at potential impacts as required under NEPA, and the latest and most up-to-date science on the species, incorporated in the DEIS, states that all sites north of Highway 20 are critical to persistence. Yet the PRMP plans on removing many of these sites and

will not protect them all. Thus the PRMP will contribute towards the need to list the species.

Issue Number: PP-OR-RMPforWOr-16-12-122

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to public comments indicating that these assertions are not supported by the evidence from SW Oregon. The FEIS thus fails to reflect the best available science which indicates that open stands (such as those resulting from thinning) tend to have more surface and ladder fuels (over time), as well as greater wind penetration, lower humidity, dryer fuels, longer flame lengths, and higher fire intensity at the flame front. Forests with a dense canopy tend to have a more cool, moist, and less windy fire microclimate, and the canopy helps suppress the growth of surface and ladder fuels.

Issue Number: PP-OR-RMPforWOr-16-12-124

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS also fails to reflect use of the best available information indicating that greater time-since-fire actually increases fire resistance. That is, fires are likely to burn more severely in forests that have been more recently logged or burned, and are likely to burn less severely in closed-canopy forests that have not been recently logged or burned. This may be related to the fact that closed canopy forests maintain a cool- moist microclimate that helps retain higher fuel moisture and more favorable fire behavior. Canopy cover also helps suppress the growth of ladder

fuels. The significance of this is that it may make sense to variably retain more canopy cover while thinning and limiting treatment of canopy fuels except to provide some well-spaced “escape hatches” for hot gases generated by surface fires. The FEIS/PRMP, however, does not address or consider this highly relevant issue.

Issue Number: PP-OR-RMPforWOr-16-12-125

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM cannot rationally rely on anecdotes to justify fuel reduction logging when more relevant scientific evidence is available.

Issue Number: PP-OR-RMPforWOr-16-12-137

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM justifies its erroneous conclusions based on the outdated views of local leaders that do not reflect the best available evidence.

Issue Number: PP-OR-RMPforWOr-16-12-148

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM’s plan to conduct salvage logging in moderate and severely burned stands located in the Harvest Land Base conflicts with the best available science regarding how to achieve the stated purpose and need and management objectives concerning conservation of threatened and endangered species, economic stability of local

communities, production of clean water and restoration of fire-adapted ecosystems.

Issue Number: PP-OR-RMPforWOr-16-12-158

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The EIS also fails to fully analyze and disclose the following issues concerning post-disturbance logging: Loss of decaying wood and depletion of the “savings account for nutrients and organic matter” which affects site productivity through the removal of dead trees which store nutrients and slowly release them to the next stand (Marañón- Jiménez, S., Fernández-Ondoño, E., and J. Castro, 2013). Charred wood remaining after a wildfire as a reservoir of macro- and micronutrients in a Mediterranean pine forest (International Journal of Wildland Fire, <http://dx.doi.org/10.1071/WF12030>) (“Partially charred wood represented a considerable pool of nutrients, due to both the relatively high concentrations and to the great amount of biomass still present after the fire. Potential contributions of the charred wood were particularly relevant for N and micronutrients Na, Mn, Fe, Zn and Cu, as wood contained 2–9 times more nutrients than the soil. Post-fire woody debris constitutes therefore a valuable natural element as a potential source of nutrients, which would be lost from ecosystems in cases where it is removed”)
• Recent studies indicate that wood may release nutrients more rapidly than previously thought through a variety of decay mechanisms mediated by means other than microbial decomposers, i.e., fungal sporocarps, mycorrhizae and roots, leaching, fragmentation, and insects.

Issue Number: PP-OR-RMPforWOr-16-12-178

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director is wrong for assuming that thinning can maintain dispersal habitat with 40% canopy and spotted owl NRF habitat with 60% canopy (FEIS/PRMP at 1112). Failure to maintain post-harvest canopy standards means that BLM cannot assure USFWS that take is not occurring. This is important because once NSO habitats are overcut the “error” cannot be corrected. In addition to overcutting, unanticipated blowdown is significantly reducing canopy as reported by Medford BLM District. The BLM cannot comply with the ESA if it does not fully acknowledge unauthorized NSO downgrades and removals in accordance with project BiOps.

Issue Number: PP-OR-RMPforWOr-16-12-179

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Without an updated baseline, BLM’s FEIS/PRMP cannot be considered accurate in predicting the trade-offs between increased logging and adequate retention of NSO habitat. More importantly, the BLM cannot assure that future timber sales are not taking NSO because they cannot assure that thinned habitat is maintaining habitat as claimed. See FEIS/PRMP at 2000-2004.

Issue Number: PP-OR-RMPforWOr-16-12-184

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The PRMP/FEIS must address all of this new scientific information about the role of snags in a functioning ecosystem but fails to do so. This failure renders the FEIS inadequate under NEPA and the PRMP arbitrary and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-12-191

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to take a hard look at the effects of proposed logging in light of this information, or identify any scientific information that would allow it to disregard this important information about spotted owl dispersal.

Issue Number: PP-OR-RMPforWOr-16-12-195

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to take a hard look at the consequences of logging in the important east-west connectivity corridor north of Medford and Grants Pass, and mostly south of the Douglas County line.

Issue Number: PP-OR-RMPforWOr-16-12-66

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The PRMP, the NMFS December 18, 2015 letter, and Reeves et al. (in press) all have the same shortcoming: the one tree riparian reserve is arbitrary and based primarily on conjecture as to effectiveness but is at odds with extensive scientific analyses and information

gathered and published over the last 20 years. The riparian reserve 50% reduction is based on unproven and outdated modeling schemes to expedite timber harvest and road building in existing riparian reserves. The NMFS August 21, 2015 letter and Frissell et al. 2014 are based on a proven 20 year track record of effectiveness for 2 tree riparian reserves adjacent critical habitat.

Issue Number: PP-OR-RMPforWOr-16-12-74

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS is also wrong in claiming that SONNC co-ho salmon in the Medford District are stable or status unchanged. Huntley Park co-ho salmon counts show declines since 2004 indicating no sustained improvement of freshwater habitat. Coho counts at Huntley Park in 2015 were only 20% of the ten year average indicating continued failure of fresh water habitat to produce adequate numbers of smolts.

Issue Number: PP-OR-RMPforWOr-16-13-23

Organization: Klamath Siskiyou Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: The State Director is wrong for assuming that thinning can maintain dispersal habitat with 40% canopy and NRF habitat with 60% canopy (FEIS: 1 1 12). Failure to maintain post-harvest canopy standards means that BLM cannot assure USFWS that take is not occurring, despite what the BA, BiOp and Decision claim. This is important because once NSO habitats are overcut the “error” cannot be corrected. In addition to overcutting,

unanticipated blowdown is significantly reducing canopy as reported by Medford BLM District. We speculate that the February 20 16 BA submitted to USFWS failed to acknowledge unauthorized NSO downgrades and removals contrary to project BiOps.

Issue Number: PP-OR-RMPforWOr-16-13-24

Organization: Klamath Siskiyou Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: Without an updated baseline, BLM's RMP cannot be considered accurate in predicting the trade-offs between increased logging and adequate retention of NSO habitat. More importantly, the BLM cannot assure that future timber sales are not taking NSO because they cannot assure that thinned habitat is maintaining habitat (see FEIS 2000-2004).

Issue Number: PP-OR-RMPforWOr-16-13-6

Organization: Klamath Siskiyou Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: The PRMP, the NMFS December 18, 2015 letter and Reeves et al. (in press) al I have the same shortcoming: the one tree riparian reserve is arbitrary and based primarily on conjecture as to effectiveness. The riparian reserve 50% reduction is based on unproven and outdated modeling schemes to expedite timber harvest and road building in existing riparian reserves. The NMFS August 2 1, 20 1 5 letter and Frissell et al. 20 14 are based on a proven 20 year track record of effectiveness for 2 tree riparian reserves adjacent critical habitat.

Issue Number: PP-OR-RMPforWOr-16-14-2

Organization: American Bird Conservancy
Protester: Steve Holmer

Issue Excerpt Text: Recent studies show that Spotted Owls are well-adapted to fire, and that post-fire logging, and mechanical thinning in owl habitat pose significant threats and are contributing to population declines. A key piece of new information, the 20-year monitoring reports of the Northwest Forest Plan, is now available and should have been considered, but it appears to have been completely ignored by BLM.

Issue Number: PP-OR-RMPforWOr-16-27-1

Organization: Pacific Crest Trail Association
Protester: Ian Nelson

Issue Excerpt Text: The Environmental Consequences section for the Pacific Crest National Scenic Trail...it is incorrect to imply that even the smallest corridor width of 100 feet would meet minimum requirements for protection.

Summary:

The Western Oregon PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, or the BLM Land Use Planning Handbook's guidance to use best available science in the following:

- Stand typing
- Forest inventory data
- Riparian Reserve
- Red tree vole
- Carbon and climate
- Post-disturbance (salvage) logging
- Fire and Fuel Risk
- Northern spotted owl

Issue Number: PP-OR-RMPforWOr-16-28-3

Organization: Umpqua Watersheds, Inc.
Protester: Joseph Quinn

Issue Excerpt Text: It should be further noted that while the PRMP acknowledges the sources of logs and revenue available to domestic manufacturers and the O & C Counties at the state level (i.e., from the huge volume of exported but unprocessed logs, and from a reinstatement of reasonable harvest taxes on large holdings), but declines to comment upon it. This is a deliberate discounting of a readily available source of revenue for state and local governments, and had been for decades.

Issue Number: PP-OR-RMPforWOr-16-39-2

Organization: Benton Forest Coalition
Protester: Reed Wilson

Issue Excerpt Text: The third statement, that research and adaptive management efforts are "habitat-independent" is also incorrect. Clearly any research about competitive interactions must include habitat availability as a co-variate, and cannot be classified as "habitat-independent".

- Snags
- Fish
- Pacific Crest Trail
- Socioeconomics

Response:

All Concerns:

The BLM considered all relevant information in the Western Oregon PRMP/FEIS. The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)).

The BLM NEPA Handbook also provides guidance to the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM described the analytical methodology in the Planning Criteria (p. 27), which the BLM made available for public review and comment in April 2014. For each resource or resource use, the BLM identified the issues requiring analysis and a description of how each issue will be analyzed, including analytical assumptions, geographic and temporal scope, units of measure, methods and techniques, conclusions, data needs, data display, and references, as appropriate (Planning Criteria, p. 27).

The BLM includes a bibliography in the PRMP/FEIS for each resource, which lists information considered by the BLM in preparation of the PRMP/FEIS. In its determination about what constitutes "best available information," the BLM must review information for relevance to the planning effort and the supporting analysis. A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data.

Northern Spotted Owl

The protesters assert that the BLM violated NEPA by failing to use best available information regarding the current condition of northern spotted owls and the impacts of forest management actions on northern spotted owls and their critical habitat. The purpose of this RMP revision was, in part, because of new scientific information and policies related to the northern spotted owl (PRMP/FEIS, p. xxiii). The PRMP/FEIS includes a bibliography that lists the documents used in preparing the northern spotted owl analysis. PRMP/FEIS, pp. 987-989. The BLM described the framework for analyzing effects to the northern spotted owl and their critical habitat in the Planning Criteria, which was made available for public review and comment April 2014 (Planning Criteria, pp. 171-185).

Pursuant to NEPA, the BLM uses high quality information and by policy direction uses best available science to support NEPA analyses, but the BLM is not required to perform an exhaustive search of baseline data. Information is not relevant if it does not lead to a reasoned choice between alternatives. The protester cites Sovern et al. (2015) to support their objections to management direction regarding canopy retention requirements. This article offers recommendations for canopy cover requirements that differ from those within the PRMP/FEIS, but does not include any scientific information that would alter the analysis or conclusions in the PRMP/FEIS. Nesting-roosting and dispersal habitats have clear, science-based thresholds of adequacy. PRMP/FEIS, p. 1951. Dispersal habitat was defined by Thomas et al. (1990, p. 27), and refined by Miller et al. (1997) and Forsman et al. (2002) (Planning Criteria, p. 174).

The BLM addressed the issue of the monitoring report in response to comments. The protest confuses the northern spotted owl portion of the Northwest Forest Plan 20-year monitoring report (Davis et al. 2015), which was released in draft form, with the newest northern spotted owl meta-analysis, which had not yet been released at the time of the preparation of the PRMP/FEIS. The BLM does not use annual reports results from individual demography study areas, because they are not analytically credible due to their sample sizes; hence, the need for a meta-analysis about every 5 years (PRMP/FEIS, Appendix W, p. 1980).

Carbon and Climate

The protester claims that the BLM failed to use best available information in its analysis on carbon and climate in the PRMP/FEIS. The PRMP/FEIS includes a bibliography that lists the documents used in preparing the climate change analysis. PRMP/FEIS, pp. 203-211. The BLM disclosed the sources of uncertainty in carbon storage modelling. PRMP/FEIS, Appendix G, p. 1297. The protest makes a vague assertion about “best available evidence,” but fails to clearly and concisely state what the best available science is or how BLM failed to consider it.

Fire and Fuel Risk

The protester asserts that the BLM violated NEPA by failing to use best available information regarding fire and fuels in the PRMP/FEIS. The PRMP/FEIS includes a bibliography that lists the documents used in preparing the fire and fuels analysis (PRMP/FEIS, pp. 271-275). The BLM addressed scientific controversy regarding fire risk following post-fire salvage in the PRMP/FEIS, Appendix W: “A recent publication found that post-fire logging reduced woody surface fuels up to four decades following a wildfire in Eastern Washington (Peterson, Dodson, and Harrod 2015). Alternatively, a study from the Klamath Region found that areas that had been salvaged-logged and then planted following the Silver Fire in 1987 burned more severely in 2002, relative to previously unmanaged areas (Thompson, Spies, and Ganio 2008). These researchers also found that following severe wildfire in this region, young vegetation is at increased risk of re-burning at high-severity, regardless of whether it has been managed.”

In response to this scientific controversy, the BLM expanded the discussion in the PRMP/FEIS of this conflicting science and identified how this scientific conflict influences the BLM’s ability to predict resource impacts in the Fire and Fuels section of Chapter 3. Best available information supports the analysis that vegetation management, which includes mechanical and prescribed fire treatments, has successfully moderated fire behavior and fire effects, even under extreme

weather events (Prichard and Kennedy 2014), and has contributed toward more resilient future forest structure (Stevens-Rumann et al. 2013) (PRMP/FEIS, p. 228).

The protester reiterates this known and disclosed scientific controversy, but fails to make an affirmative showing as to how the BLM's reliance on available information is in error.

Forest Inventory

The protester suggests that the BLM cannot use analytical information from the 2008 FEIS. It is appropriate for the BLM to rely on information in the 2008 FEIS to the extent it provides high quality information relevant to the analysis for this RMP revision. The CEQ regulations direct agencies to incorporate such information by reference (40 CFR 1502.21). The BLM NEPA Handbook explains that the BLM can incorporate any such information by reference if the information is reasonably available for public inspection (USDI BLM 2008, p. 26). The analysis in the 2008 FEIS does provide high quality information relevant to this analysis and is available for public inspection. Thus, it is appropriate for the PRMP/FEIS to incorporate that information from the 2008 FEIS by reference.

As addressed in PRMP/FEIS, Appendix W, the PRMP/FEIS does estimate the maximum timber production allowable under the O&C Act, noting that the amount is approximately the same as the amount estimated in the 2008 FEIS—1.2 billion board feet per year (USDI BLM 2015, pp. 261–262). Beyond approximating this timber volume, the BLM did not identify any need to use the “maximum timber production allowable under the O&C Act” as a reference analysis in comparison to the effects of the alternatives. PRMP/FEIS, Appendix W, p. 1853. The protester does not explain how further analysis of this reference analysis would assist in interpreting the results of the analysis, beyond asserting that the current number would be “almost certainly greater.” Further analysis could give more precision to this analytical conclusion, but would not alter this conclusion.

Mapping Errors

The protester claims the BLM has refused to address and correct a mapping error in a portion of the planning area. The BLM responded to the protester's concerns in e-mails dated May 12, 2015 and April 18, 2016. While the protester asserts that he has identified an error in the mapping of BLM “old growth”, the mapping in the section he specifies is not an error. Across BLM lands in Oregon, having small inclusions of older trees in younger stands is relatively common. While the stand in question includes pockets of older and taller trees, the stand as a whole has been appropriately typed as a younger stand.

Pacific Crest Trail

The BLM considered how the designation of various widths of National Trail Management Corridors by alternative and the Proposed RMP would affect the values and uses associated with the trails. The BLM conducted a trail viewshed analysis for the portion of the Pacific Crest Trail that passes through BLM-administered lands in the planning area to determine the percent of BLM-administered lands within the trail's viewshed.

For the purposes of this analysis, the BLM assumed that the management decisions for National Trail Management Corridors would adequately protect the values and uses associated with the

National Trails, including the Pacific Crest Trail within the decision area. PRMP/FEIS, p. 505. The protester declines to make an affirmative showing as to how the analytical assumption is in error. The BLM would establish a 1-mile National Trail Management Corridor off the centerline (1/2 mile on each side) on the Pacific Crest Trail. PRMP/FEIS, p. 514. Therefore, the protester's concerns about a 100 foot corridor are moot.

Red Tree Vole

The protester claims that additional analysis and information is required to satisfy the requirements of NEPA regarding the use of best available information. The protester cites the USFWS' 12-Month Finding (2011), which the BLM used in the development of the PRMP/FEIS. The 12-Month Finding states "standardized quantitative data are not available to rigorously assess population trends of red tree voles" (76 FR 63740). Thus, the BLM's acknowledgment that there are "uncertainties around population numbers, trend, and distribution of the North Oregon Coast DPS of the red tree vole" remains accurate and demonstrates BLM's reliance on best available information. PRMP/FEIS, p. 1979. For additional discussion on the effects to red tree voles, see section 1.7.12.

Riparian Reserves

The protester asserts that the BLM violated NEPA by failing to use best available information pertaining to identification of the Riparian Reserve. The BLM acknowledges that there has been a robust debate about effective riparian management strategies for conservation and recovery of ESA-listed fish and summarized findings from two primary views in the PRMP/FEIS (p. 281).

The BLM includes a bibliography in the PRMP/FEIS for each resource, which lists information considered by the BLM in preparation of the PRMP/FEIS. As stated in the PRMP/FEIS, Appendix X, the BLM reviewed Frissell et al. 2014 and determined that it does not provide any new scientific information relevant for the analysis of the effects of the alternatives. PRMP/FEIS, pp. 281, 1846. This unpublished report to the Coast Range Association is a collection of policy recommendations and critiques of administrative policies and legislative proposals.

2 tree heights:

The BLM analysis does not support the protester's view that the second site-potential tree height is necessary to achieve the purpose and need of this RMP revision and management objectives of the PRMP. PRMP/FEIS, Appendix W, p. 1846. In a December 18, 2015 letter from NMFS to the BLM, NMFS clarified that they believe that the approach in the Northwest Forest Plan is not the only approach that would ensure the protection and recovery of threatened and endangered fish, and that the best available science also supports an approach that would include a one site-potential tree height Riparian Reserve on fish-bearing streams and perennial streams. PRMP/FEIS, p. 1841.

Salvage

The protesters assert that the BLM violated NEPA by failing to use best available information regarding post-disturbance (salvage) logging. The BLM disagrees with the assertion that salvage in the Harvest Land Base conflicts with the BLM's purpose and need. The BLM's stated purpose and need includes many objectives and the planning area level, including contributing to the

conservation and recovery of threatened and endangered species and restoring fire-adapted ecosystems (PRMP/FEIS, p. xxiii). The PRMP/FEIS includes several types of land use allocations or administrative designations. With the exception of ACECs, each acre is assigned to one and only one category. PRMP/FEIS, p. 37. Not all allocations include conservation objectives—that is, each allocation is not intended to simultaneously meet every purpose and need, but rather it is the allocations in the aggregate that meet the purpose and need. Management direction for lands within the Harvest Land Base focus on timber objectives, including but not limited to recovering economic value from timber following disturbances such as fires, windstorms, disease, or insect infestations. The protesters disagree with the management objectives for the Harvest Land Base, but fail to clearly and concisely state how best available information precludes the BLM from conducting salvage harvest to meet the stated management objectives of the Harvest Land Base.

Within the Late-Successional Reserve, management objectives focus on the conservation, development, and maintenance of habitat for late-successional forest dependent species. The BLM relied on best available information in developing the limited use of salvage in this land use allocation. The BLM would not conduct timber salvage after disturbance, except when necessary to protect public safety, or to keep roads and other infrastructure clear of debris (PRMP/FEIS, pp. 90, 1116). The BLM has used best available information in the analysis of salvage harvest in the planning area. The protesters disagree with BLM's application of salvage harvest in areas designated primarily for forest production, but fail to make an affirmative showing as to how the BLM is in error.

Snags

The protesters assert that the BLM violated NEPA because of a failure to address best available information regarding snags. The BLM recognizes the importance of snags and explored a variety of snag retention and creation requirements in the PRMP/FEIS.

The protesters specifically object to snag creation standards in the Harvest Land Base. The basis of this objection is not in the use of best available information, but rather its basis represents a fundamental disagreement with the stated management objectives for the Harvest Land Base. As stated in the PRMP/FEIS, management objectives for the Harvest Land Base focus on timber production; as such, additional information regarding snags and snag retention would not lead to a reasoned choice between the alternatives. However, as addressed in Appendix W, the BLM has integrated timber harvest objectives with conservation objectives in the design of the action alternatives and the Proposed RMP with varying approaches. Specifically, the BLM has incorporated regeneration harvest with varying levels and patterns of retention and uneven-aged management approaches into several action alternatives and into the Proposed RMP, which would create complex early seral habitats. PRMP/FEIS, Appendix W, p. 1970.

Information regarding snags and snag retention levels is more relevant to land use allocations with conservation objectives, including the Late-Successional Reserve and Riparian Reserve. The protesters fail to demonstrate how the BLM failed to rely on best available information regarding these strategies.

Socioeconomics

The protester claims that the BLM failed to use best available information regarding alternative sources of revenue for state and local governments. The BLM addressed the issue of external funding sources for counties in Appendix W. The BLM used best available information in the PRMP/FEIS to evaluate the effects of the alternatives on county payments from activities on BLM-administered lands. “Counties decide how to change spending in response to changes in payments from activities on BLM-administered lands. County residents, through their elected officials and through votes on taxes or fees, choose how they collect revenues to fund county services. How counties could obtain sources of funding other than payments derived from activities on BLM-administered lands is beyond the scope of an RMP. PRMP/FEIS, Appendix W, p. 1951. As such, additional analysis regarding alternate revenue sources for counties is not relevant and would not lead to a reasoned choice between alternatives.

Southern Oregon / Northern California Coho Salmon

The protester claims that BLM failed to use best available information regarding the current status of listed Southern Oregon/Northern California Coho salmon. The PRMP/FEIS describes the current status of threatened and endangered species in the planning area as listed under the ESA (PRMP/FEIS, pp. 277-278). The protester’s use of the term “status” is different than the BLM’s use of the term “status” in the PRMP/FEIS. “Status” in the PRMP/FEIS refers to the listing status under the ESA, and as such, the listing status of the Southern Oregon/Northern California Coho salmon presented in the PRMP/FEIS is accurate and reflects the best available information (PRMP/FEIS, p. 278). The species was listed as threatened under the ESA June 28, 2005; 70 FR 37160. Further, a land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. The information referenced by the protesters is not the appropriate scale of analysis for a land use plan revision.

In conclusion, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS, and provided an adequate analysis and disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapter 3). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/FEIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze available and relevant data.

NEPA – Opportunity to Comment

Issue Number: PP-OR-RMPforWOr-16-08-6

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The BLM has essentially hard wired regulatory agency comments without affording the public the opportunity to knowingly review and comment on the accuracy of the comments or other alternative measures that could prevent jeopardy while achieving the purposes of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-11-23

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Furthermore, the use of this method (Reeves et. al. “In Press”) was not readily available for public review at the time the DEIS was released nor sufficiently prior to the 30 day DEIS comment period to allow, for necessary, separate scientific peer review. This is a NEPA violation and also inconsistent with Executive Branch Law and Policy under, respectively, the Information Quality Act and OMB Peer Review Bulletin. This issue alone - failure to disclose the supporting scientific basis behind changing all the riparian reserves in Western Oregon.

Summary:

The BLM did not give the public an opportunity to review comments from regulatory agencies or literature from Reeves et al., which is “In Press”.

Response:

The BLM has involved the public in the EIS process. NEPA is a public process (42 USC 4331(a); 40 CFR 1500.1(b)); 40 CFR 1501). The BLM shall involve the public in preparing and implementing the agency’s NEPA practices (40 CFR 1506.6). How the BLM involves the public is at the discretion of the BLM, so long as the opportunity for meaningful involvement is provided and the circulation requirements are met (40 CFR §§ 1502.19, 1503.1; 43 CFR 46.435). The BLM, when preparing an EIS, “must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views, and thus inform the agency decision-making process” (Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers, 524 F.3d 938, 953 (9th Cir. 2008)). The methods of doing so are at the discretion of the agency (40 CFR §§ 1502.19, 1503.1; 43 CFR 46.435).

The BLM has acted consistent with the BLM policy direction in the BLM’s NEPA Handbook. The NEPA Handbook helps the BLM comply with the National Environmental Policy Act. BLM National Environmental Policy Act Handbook, H-1790-1 (“Handbook”), at ix. It contains directions for use by BLM employees involved in NEPA compliance (*Id.* at 2). A handbook is

guidance, and does not create a binding expression of agency interpretation of law. *Northern California River Watch v. Wilcox*, 633 F.3d 766, 779 (9th Cir. 2011) (and cases cited therein). Documents may be incorporated by reference into a NEPA document when the incorporated document is reasonably available for inspection by the public during the comment period (40 CFR § 1502.21; Handbook at 26). ‘Incorporation by reference’ is a mechanism by which the incorporated document is made part of the NEPA document, including a summary of the incorporated document (*Id.*; *Knieval et al. v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)). By contrast, a document that is relied on for a particular statement or fact is simply referred to, without needing to be incorporated by reference. *Black’s Law Dictionary* 662 (5th Pocket Ed. 2016).

The BLM accepted and considered comments from the public, tribes, and government agencies, including regulatory agencies, throughout the NEPA process (PRMP/FEIS, pp. 1041-1051). As required by the NEPA, the BLM coordinated this planning effort with regulatory agencies. PRMP/FEIS, pp. 1049-1051. The BLM incorporated comments from others, including regulatory agencies, into the DEIS which BLM made available for public review and comment from April 24, 2015 through August 21, 2015. PRMP/FEIS, p. 1833. Consistent with NEPA Section 102, the BLM published the regulatory agency comments on the DEIS on the BLM web site on October 30, 2015.

The BLM is not prohibited from using new information, including documents that are in press. To the contrary, the BLM is required to use the best available information. Although not peer reviewed at the time the PRMP/FEIS was released, the Reeves et al. document satisfied the ‘best available’ information guidance in the NEPA because it supported the analysis. The BLM’s reference to Reeves et al. (In Press) in the PRMP/FEIS (pp. 281, 284, 285) did not substantially change the analysis or alternatives between the DEIS and the PRMP/FEIS. The protestant claims the Reeves et al. (In Press) document requires separate scientific peer review. Scientific peer review of published articles is not within the scope of an RMP, and is outside the scope of the PRMP/FEIS analysis.

In conclusion, the BLM gave the public an opportunity to review the DEIS which incorporated informal comments from regulatory agencies and others. As of May 25, 2016, the BLM has not received formal consultation comments and any reasonable alternatives proposed by the regulatory agencies to prevent jeopardy. Reeves et al., which is “In Press”, is part of the decision record, and has been and is available to the public upon request.

NEPA – Response to Comments

Issue Number: PP-OR-RMPforWOr-16-04-4

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: Numerous substantive concerns were raised during the comment period for the DEIS regarding unauthorized and unmanaged OHV use, yet no significant change was made to the FEIS or PRMP regarding OHV regulations.

Issue Number: PP-OR-RMPforWOr-16-05-3

Organization: Jackson County

Protester: Rick Dyer

Issue Excerpt Text: The State Director ignored Jackson County's comments on the Draft RMP/EIS and did not respond at all to those comments in the published Proposed RMP/EIS.

Issue Number: PP-OR-RMPforWOr-16-09-5

Organization: Association of O&C Counties

Protester: Kevin Davis, Attorney

Issue Excerpt Text: During the course of the planning process the AOCC requested numerous times that the BLM calculate and publish the annual productive capacity of the O&C lands. The BLM refused, and did not include any such determination in its draft EIS or draft RMP. In its comments submitted on August 20, 2015, the AOCC demanded that such a calculation be made with the results and an analysis of them published in a supplemental draft EIS. The BLM did not respond, but in its PRMP, the BLM now labels its projected sustained-

yield sale level of 205 MMbf as the “annual productive capacity” of the lands. That is a grossly incorrect measurement of the annual productive capacity.

Issue Number: PP-OR-RMPforWOr-16-08-9

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: While the PRMP/FEIS address fire risk in the context of creating fire resilient forests, it does not address the other concerns raised by the DFPA.¹⁸ DFPA specifically stated that:

“All alternatives proposed in the current Draft RMP fail to adequately address post fire/natural disaster salvage or fuels mitigation as a viable alternative to reducing high intensity fires on the landscape, nor does the Draft RMP address a strategy to reduce the number of large fires or how the agency intends to reduce the number of acres burned.”

Issue Number: PP-OR-RMPforWOr-16-11-13

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The Coast Range Association commented extensively on the faulty modeling of hydrologic response and LWD delivery to streams, in the DEIS but these comments were completely ignored.

Issue Number: PP-OR-RMPforWOr-16-11-14

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM has not adequately addressed these comments other than to admit on pages 407 - 411 of the Volume 1, "Hydrology" chapter (and also in their response to comments in Appendix W to the RMPEIS) that the full range of hydrologic and other responses brought up in Coast Range Association comments and in Frissell et al. 20 14 were not evaluated.

Issue Number: PP-OR-RMPforWOr-16-11-29

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: All of the Coast Range comments on this aspect (flawed hydrologic modeling) have been ignored.

Issue Number: PP-OR-RMPforWOr-16-12-109

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM also claims that it is restricting OHV use near "known fisher den sites" but because the BLM is not conducting project specific fisher surveys, this restriction is nearly meaningless and does not address the concerns raised in comments.

Issue Number: PP-OR-RMPforWOr-16-12-122

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to public comments indicating that these assertions are not supported by the evidence from SW Oregon. The FEIS thus fails to reflect the best available science which indicates that open stands (such as those resulting from thinning) tend to have more surface and ladder fuels (over time), as well as greater wind penetration, lower humidity, dryer fuels, longer flame lengths, and higher fire intensity at the flame front. Forests with a dense canopy tend to have a more cool, moist, and less windy fire microclimate, and the canopy helps suppress the growth of surface and ladder fuels.

Issue Number: PP-OR-RMPforWOr-16-12-126

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP does not address several serious flaws identified in public comments on the DEIS. For example, the FEIS over-estimates the value of logging and under-estimates the value of forest conservation with respect to fire hazard.

Issue Number: PP-OR-RMPforWOr-16-12-166

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to comments showing that regeneration harvest is not needed and would have undisclosed adverse environmental impacts. There is already too much early seral forest

in the checkerboard landscape and climate change is expected to create more. BLM seems to think that managing for sustained yield somehow requires BLM to conduct regeneration harvest on some significant portion of the landscape.

Issue Number: PP-OR-RMPforWOr-16-12-193

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Public comments suggested larger reserves, wider stream buffers, more limitations on logging that would degrade habitat. BLM failed to respond. The available scientific information, e.g., Sovern et al 2015 (and other material cited in the DEIS comments), indicates BLM should retain 80% canopy cover in key dispersal corridors. As areas that require special management, these areas should have been designated as ACECs. To inform the public and the decision-maker these areas should be mapped. BLM has not explained its failure to provide protection for owl dispersal habitat consistent with the available scientific information and this failure is arbitrary.

Issue Number: PP-OR-RMPforWOr-16-12-197

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM did not respond to these public comments highlighting the need for greater conservation of suitable owl habitat in light of the barred owl invasion which undermines a critical assumption underlying the Northwest Forest Plan - that assumption is that all suitable owl habitat is available to spotted owls.

Issue Number: PP-OR-RMPforWOr-16-12-24

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Protesters object to the BLM's incomplete response to comments. BLM responded to some comments and ignored others, many of which raised substantive and compelling issues with the analysis in the DEIS.

Issue Number: PP-OR-RMPforWOr-16-12-25

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The Response to Comments repeatedly denies stating various conclusions because it merely cited studies stating those conclusions. This is misleading. How are the public and the decision-maker to distinguish among things that the FEIS says and things stated by others and included in the FEIS? When BLM describes the conclusions of others, they are adopting those views, unless they are clearly part of a discussion of opposing views.

BLM failed to respond to public comments concerning BLM's improper interpretation of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-12-27

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM must respond to opposing viewpoints by taking a hard look at the core issue of sustained yield. Its failure to do so is arbitrary for the reasons described above.

Issue Number: PP-OR-RMPforWOr-16-12-34

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to public comments showing that managing BLM lands for carbon storage and climate mitigation would not only be consistent with BLM's existing legal mandates, but that BLM's failure to manage for carbon storage would violate BLM's legal duties, including but not limited to:

- BLM's FLPMA duty to maintain an up-to-date inventory of public lands and their new and emerging resource values (43 USC § 1711) such as carbon;
- BLM's FLPMA duty to give priority to identifying ACECs where special management is needed to prevent irreparable damage and protect life and safety from safety from natural hazards. (43 USC § 1712) such as storing more carbon to mitigate global warming, and protect streamside forests and watersheds from the effects of climate change;
- BLM's FLPMA duty to consider "potential uses of public lands" (43 USC § 1712).
- BLM's FLPMA duty to consider scarcity of values and available alternatives. (43 USC § 1712) such as the unique carbon storing capacity of low elevation forests in this region compared to other regions and ecosystems, and the globally limited supply of climate mitigation alternatives relative to the cumulative global need for carbon storage and avoided emissions. Public comments noted: "The 'carbon density' of Westside forests exceed that of any forests in North America⁶⁷, possibly the world. This means that BLM lands are uniquely suited for sequestering carbon."⁶⁸;
- BLM's FLPMA duty to consider long-term vs. short-term benefits (43 USC § 1712). This requires BLM to recognize that the benefits of logging are very short-term,

while the benefits of climate mitigation through conserving and restoring mature & old-growth forests are both short-and long-term;

- BLM's O&C Act duty to sell timber only at "reasonable prices on a normal market" which serves to correct market failures and compensate for "externalities" such as the social cost of carbon dioxide emissions;
- BLM's O&C Act duty to manage for "permanent forest production," by maximizing carbon storage in order to minimize the predicted effects of climate change, including loss of forest cover, conversion of forest to shrub lands, etc.
- BLM's O&C Act duty to "protect watersheds" by maximizing carbon storage in order to minimize the predicted effects of climate change, such as an amplified hydrological cycle, increased storm intensity, increased peak flows that will interact adversely with BLM's road drainage system, etc.;
- BLM's O&C Act duty to "regulate stream flow" by maximizing carbon storage in order to minimize increased predicted peak flows and reduced summer stream flows caused by global warming;
- BLM's O&C Act duty to "contribute to the economic stability of local communities and industries" by maximizing carbon storage in order to minimize the predicted economic impacts of global climate change, ocean acidification, sea level rise, disruption of global food production, harm to human health, and to minimize logging that tends to feed the timber industry that is inherently volatile and destabilizing;
- BLM's O&C Act duty to "provide recreation facilities" by maximizing carbon storage in order to minimize adverse effects of climate change on recreation, such as increased floods that wash-out roads and trails and campgrounds, increased drought and reduced stream flows that will reduce opportunities for water-based recreation, and

reduced habitat quantity and quality that will reduce hunting and fishing opportunities.

- BLM’s ESA duty to conserve listed species, conserve the habitat on which listed species depend, and avoid actions that would contribute to the need to list species. BLM failed to fully recognize that maximizing carbon storage would help minimize the effects of global warming and ocean acidification that are predicted to increase the risk of disturbance, increase drought stress, increase intensity of precipitation events, and is thus predicted to make it harder to conserve existing habitat and restore degraded habitat for spotted owl, marbled Murrelet, and salmon;

- BLM’s Clean Air Act duties, such as 42 USC § 7402(b) requires all federal agencies to use their authorities to further the goals of the Clean Air Act. Sections 7401(b)(1) and 7470(1) set forth clear goals to protect the public welfare by limiting air pollution such as CO₂;

- BLM’s Clean Water Act duty to avoid CO₂ emissions and help minimize water quality problems such as ocean acidification and polluted road run-off during climate-amplified storms.

Issue Number: PP-OR-RMPforWOr-16-12-36

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 6, FEIS/PRMP at 1837-38, BLM explains that it failed to make carbon storage part of the purpose and need because BLM did not recognize that reducing the effects of climate change would help it meet its legal mandates under the O&C Act and ESA and FLMPA. Executive Order 13653, directs agencies to assess climate change related impacts on and risks to the agency’s ability to accomplish its missions and programs. If

BLM had properly assessed the effects of climate change on its legal mandates it would have recognized the need to incorporate carbon storage into its purpose and need.

Issue Number: PP-OR-RMPforWOr-16-12-37

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 42, FEIS/PRMP at 1863, BLM refused to consider alternatives that would address climate change by minimizing carbon emissions. “BLM has no specific legal or regulatory mandate or policy direction to manage BLM-administered lands for carbon storage.”

Issue Number: PP-OR-RMPforWOr-16-12-48

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 117, FEIS/PRMP at 1896, BLM fails to mitigate for the likely adverse effects of climate change on the northern spotted owl, such as increased precipitation during spring, which is closely associated with spotted owl nest failure.

Issue Number: PP-OR-RMPforWOr-16-12-49

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to consider more accurate estimates of the social cost of carbon dioxide emissions. The Response to Comment said, “The value reflects the latest Federal estimates of the

social cost of carbon, using the guidance and methods outlined by the Council on Environmental Quality.” The Response to Comment said “BLM believes using the current (2015) social cost of carbon estimates in the Proposed RMP/Final EIS is justified, because more comprehensive, peer-reviewed estimates are not available.” NEPA does not allow BLM to limit its analysis that way. BLM failed to respond to detailed comments about various criticisms of the official cost estimates. Several important costs are left out of the official estimates, so higher values make more sense. BLM failed to fulfill its duty to disclose and consider opposing viewpoints.

Issue Number: PP-OR-RMPforWOr-16-12-50

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 285, FEIS/PRMP at 1961, BLM refused to consider the environmental justice implications of BLM’s contribution to excessive CO2 emissions and global climate change. BLM failed to respond to detailed public comments explaining how logging will contribute to the adverse effects of global warming, including adverse effects on human health and disproportionate effects on poor and disadvantaged people.

Issue Number: PP-OR-RMPforWOr-16-12-55

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to public comments urging greater conservation of older forests to compensate for the expected increase in younger forests caused by climate-induced disturbance:

Comment: DEIS (p 157) says climate change will result in “changes in disturbance regimes [that] could disfavor species associated with old-growth forests, by shifting more of the landscape into earlier seral stages, altering species compositions to ones less preferred, reducing the extent of large trees and structurally-complex forest, and decreasing patch sizes preferred for different life stages, such as nesting...” The NWFP assumed that eventually 80% of the reserves would grow old and provide late successional habitat, while at any given time approximately 20% of the reserves might be affected by disturbance. As a result of climate change these proportions are likely to shift toward greater disturbance and more younger forests. BLM should mitigate for this by adopting a final alternative that protects all suitable owl habitat, not just a subset of high quality habitat, and by protecting larger LSRs and riparian reserves so that there is a larger part of the landscape given a chance to grow old and provide complex habitat.

Issue Number: PP-OR-RMPforWOr-16-12-58

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Response to Comments 13, FEIS/PRMP at 1845, says “the BLM adopted a purpose and need that is consistent with the agency’s discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes. ... The different Riparian Reserve strategies and different analytical assumptions related to Riparian Reserve management were all included in the vegetation modeling, which in turn informed the analysis of effects on all species, including the northern spotted owl, marbled Murrelet, and fisher.” BLM does not explain

whether this modeling reflected the disproportionate use of streamside forests by owls and Murrelets and salamanders, among other species. The PRMP/FEIS also does not disclose the loss of conservation value to particular species from this particular change in riparian reserve strategy.

Issue Number: PP-OR-RMPforWOr-16-12-60

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: “The evaluation of proposed thinning in the Riparian Reserve under the Proposed RMP or any action alternative would be solely a test of conformance with the applicable management direction. Under the Proposed RMP and all action alternatives, there would be no “burden of proof” related to thinning in the Riparian Reserve beyond evaluating whether the action would be consistent with the management direction (as with all implementation actions), and there would be no test of such thinning against “attainment of conservation goals.” This statement appears to indicate that BLM may conduct logging that knowingly harms fish as long as the management direction is met. BLM failed to take a hard look at the adverse consequences of this significant change in direction or explain why the above statement does not constitute such a change.

Issue Number: PP-OR-RMPforWOr-16-12-96

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM also says regarding survey and manage, “the Proposed RMP would generally provide a larger network of habitat for Survey and Manage

species and the amount of habitat for Survey and Manage species would generally increase over time” (FEIS/PRMP 1850). This statement fails to acknowledge or account for the loss of habitat near streams in favor of other habitat away from streams. Many species protected by survey and manage are associated with moist conditions near streams, and those species would suffer under the PRMP, but BLM does not disclose that. Second, BLM fails to account for the loss of habitat quality when BLM exploits the many new loopholes for logging in reserves including widespread canopy reduction for fuel reduction and to address insects.

Issue Number: PP-OR-RMPforWOr-16-17-2

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: The proposed ACEC is not acknowledged anywhere in the Final EIS, let alone evaluated; nor is a response to this substantive proposal provided. See, Appendices F (ACECs) and W (Responses to Comments). The Protesting Parties submitted this proposal as part of an ongoing planning process, which certainly constitutes substantive comments requiring a response under the National Environmental Policy Act (NEPA) and as discussed in BLM's Land Use Planning Handbook. 40 CFR § 1503.4; see also, Handbook 1601-1, p. 23. Further, BLM's ACEC Manual clarifies that BLM must respond to and evaluate ACEC proposals when they are received.

Issue Number: PP-OR-RMPforWOr-16-28-1

Organization: Umpqua Watersheds, Inc.

Protester: Joseph Quinn

the very legitimate observations UW presented concerning the historical and current geographical context within which the public forest lands managed by the BLM are located.

Issue Excerpt Text: The BLM did not respond adequately, or at all, to several of

Summary:

The BLM violated NEPA by failing to provide the public an opportunity to comment on Reeves et al. (In Press) and regulatory agency comments or other reasonable alternatives developed by the regulatory agencies. The BLM also failed to adequately respond to comments on the DEIS and/or has ignored information submitted during the planning process.

Response:

NEPA is a public process (42 USC 4331(a); 40 CFR 1500.1(b); 40 CFR 1501). The BLM must “make diligent efforts to involve the public in preparing and implementing NEPA procedures” to the extent practicable (40 CFR 1501.4(b); Id. 1506.6(a)). The BLM must also solicit appropriate information from the public (40 CFR 1506.6(f)). The BLM is not required to respond explicitly and directly to comments in an EIS espousing an opposing viewpoint, scientific or otherwise (40 CFR 1502.9(b); Earth Island Institute v. U.S. Forest Service, 697 F.3d 1010, 1020 (9th Cir. 2012)).

The BLM considered all relevant, appropriate, and available information in the EIS. The BLM must use information of high quality and scientific integrity in its NEPA analyses, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments, including:

- (a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:
 - (1) Modify alternatives including the proposed action.
 - (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
 - (3) Supplement, improve, or modify its analyses.
 - (4) Make factual corrections.
 - (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

- (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether

or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

The BLM considered all information and comments submitted during the planning process, beginning with the notice of intent on March 9, 2012, which initiated a scoping period until June 7, 2012. USDI BLM 2012 (Notice of Intent: <https://www.gpo.gov/fdsys/pkg/FR-2012-03-09/html/2012-5641.htm>). The BLM accepted public scoping comments until October 5, 2012. PRMP/FEIS, p. 1041. The BLM received 584 comment letters and used them to identify significant issues.

The BLM also provided the public an opportunity to comment on its methodologies in the Planning Criteria document for the Resource Management Plans for Western Oregon between February 24, 2014 and March 31, 2014. The BLM received approximately 3,000 comments during this comment period (PRMP/FEIS, p 1042). The BLM considered and used public input to refine its analytical approaches to planning.

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). In accordance with the BLM's NEPA Handbook (H-1790-1, pp. 65-66), the BLM labeled comments "substantive" when the submission:

- Identified, with reasonable basis, questions pertaining to the accuracy of information, and the adequacy of, methodology for, or assumptions used for the environmental analysis;
- Identified errors in the analysis that would substantively alter analytical conclusions;
- Provided new or missing information that would substantively alter the analytical conclusions; or
- Proposed a new alternative that would meet the purpose and need.

The BLM treated all submissions equally and did not give different consideration to submissions based on geographic location, organizational affiliation, or other status of the respondents. PRMP/FEIS, p. 1833. Additionally, the BLM did not give different consideration to comments based on the number of submissions making the same comment (*Id*).

The BLM complied with the NEPA regulations at 40 CFR 1503.4 by performing a detailed comment analysis on approximately 4,500 comment letters received on the DEIS. PRMP/FEIS, p. 1822. The BLM identified all substantive comments received by compiling, reviewing, and analyzing all comment letters on the DEIS. The BLM assessed and considered all substantive comments received on the DEIS, summarized the substantive comments into 'comment summaries', and responded to the summaries. PRMP/FEIS, Appendix W, pp. 1833-1996. The BLM combined similar concerns voiced in multiple letters into one comment summary and response (*Id*).

In response to comments, the BLM added the Proposed RMP as an alternative and expanded the discussion of alternatives considered but not analyzed in detail. PRMP/FEIS, p. 29. None of the comments warranted modification of the original alternatives analyzed in detail in the DEIS. In the process of compiling and reviewing comments, the BLM separated substantive comments from those that were not. The BLM did not address comments that expressed opinion, provided no new information or were already considered in the analysis, provided insufficient specific details to allow a response, requested analysis that was unnecessary to make an informed decision, or requested analysis that was unnecessary to provide a clear difference among the alternatives. In some cases, protesters may not find their specific comments addressed in Appendix W because the BLM addressed the comments as part of summarized comments and responses. For example, the BLM did not specifically reference Jackson County in Appendix W of the PRMP/FEIS, but Comment Summary 54 applies to Jackson County. The BLM invited all counties to become formal cooperators in this planning effort at the beginning of the revision process and again on April 28, 2015. PRMP/FEIS, p. 1870. In response to BLM's invitations, some counties, including Jackson County, chose not to sign a memorandum of understanding which was necessary to become a formal cooperator. The BLM reviewed the action alternatives for consistency with the county plans, did not find any major apparent inconsistencies and the counties did not identify any major inconsistencies in their comments on the DEIS (*Id*). Based on substantive comments, the BLM made changes to most sections of the document between the DEIS and the PRMP/FEIS to supplement, improve, modify or make corrections in the analysis. The BLM clearly identified these changes throughout the document under the heading "Summary of Notable Changes from the Draft RMP/EIS."

In conclusion, the BLM summarized notable changes from the Western Oregon Draft RMP/EIS in Chapter 3 of the PRMP/FEIS, and considered and responded to substantive comments on the Draft RMP/EIS in Appendix W of the PRMP/FEIS.

NEPA – Effects Analysis – General

Issue Number: PP-OR-RMPforWOr-16-12-19

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The public cannot assess the individual components of each alternative. Instead, the public is left with the impression that more timber harvest means less environmental protection, which, while likely true to some extent, does not allow for the public to have a true understanding of the actual differences among the alternatives, or what combination of particular aspects of particular alternatives have what particular environmental effects. Moreover, for some resources the FEIS simply describes environmental consequences in a “relative” fashion, stating that impacts would be “greater” for some alternatives than for others.

Issue Number: PP-OR-RMPforWOr-16-12-20

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP approach to developing and describing the relative effects of the alternatives does not allow the public to clearly understand the actual differences among alternatives in an absolute sense and provide meaningful input to the decision-maker about a reasoned choice among them.

Issue Number: PP-OR-RMPforWOr-16-12-27

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM must respond to opposing viewpoints by taking a hard look at the core issue of sustained yield. Its failure to do so is arbitrary for the reasons described above.

Issue Number: PP-OR-RMPforWOr-16-04-6

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: Instead of addressing the obvious environmental and social impacts of many unauthorized OHV routes, the BLM has instead legitimized and designated routes that should otherwise have been closed immediately according to EO 11644 and EO 11989. This designation was proposed with no disclosure of impacts and no specific NEPA analysis in the FEIS or PRMP. This serves to provide a way around NEPA, public comment and the full disclosure of OHV related impacts. The designation of these trails as “existing” in the “limited to existing” designation is a violation of the NEPA process.

Issue Number: PP-OR-RMPforWOr-16-04-7

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: Continued use and continued impacts will be facilitated by a “limited to existing” designation. This designation is being proposed by the BLM without acknowledgement or analysis of existing impacts to riparian areas, sedimentation, fisheries habitat, and water quality. Many of these routes are violating the Clean Water Act and the Aquatic Conservation Strategy, yet these significant

impacts were not disclosed in the FEIS or PRMP.

Issue Number: PP-OR-RMPforWOr-16-12-63

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Neither the FEIS nor Reeves et al. in press fully evaluated the need for a two-tree width reserve to provide wood and shade over the next 100-200 years...

Issue Number: PP-OR-RMPforWOr-16-12-69

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP at 1117-1129 fails to provide tree size retention standards except for fuels management (e.g., “Do not cut trees >12” dbh,” FEIS/PRMP at 1125).

Summary:

The impacts analysis contained in the Western Oregon PRMP/FEIS is inadequate. Specifically, the BLM did not give sufficient consideration to:

- the comparison of alternatives using relative terms;
- opposing viewpoints pertaining to sustained yield;
- the effects of area designations for OHV use;
- evaluating the need for a two-tree width Riparian Reserve; and
- providing tree size retention standards.

Response:

The BLM considered all relevant, appropriate, and available information in the Western Oregon PRMP/FEIS. The BLM must use information of high quality and scientific integrity in its NEPA analyses, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)).

The BLM has disclosed in the EIS the relevant and applicable information available to the agency. The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences) (Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976), n. 21; Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)). The agency must consider and disclose the environmental impact of its actions, which includes identifying the relevant information to consider (Baltimore Gas & Elec. Co. v NRDC, 462 U.S. 87, 97-98 (1983)).

The BLM took the requisite “hard look” at the environmental effects of the alternatives in the EIS. The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences) (Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976), n. 21; Robertson v. Methow Valley Citizens Council, 490

U.S. 332, 350 (1989). The agency may not rely on incorrect assumptions or data when analyzing effects (*Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005)). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010; citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)).

Comparison of Alternatives

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving a specific timber sale or Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

It is not a violation of law, policy, or regulation to use quantitative and qualitative information in an analysis or to compare alternative in a relative fashion. A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information. BLM NEPA Handbook H-1790-1, p. 55. In addition to the quantitative information provided in Chapter 3, the BLM summarizes key effects of the alternatives in quantitative form by alternative in Table 2-12 of the PRMP/FEIS (p. 112), allowing for a clear comparison among the alternatives.

Sustained Yield

The BLM appropriately applied the definition of “sustain” in the context of forest management for a sustained yield of timber as directed under the O&C Act (Glossary). Sustained yield is a forestry term that defines the level of timber harvesting that can take place on a forested area in perpetuity, at a given intensity of management; in other words, the level of timber harvest that can be maintained over time. PRMP/FEIS, pp. 1914. Complying with the principles of sustained yield requires the BLM to verify mathematically that timber harvest levels will not decline over time due to overcutting practices. For the Proposed RMP and alternatives, the BLM has modeled a repeated cycle of harvest and regrowth that does not decrease over time (Appendix C - Vegetation Modeling, for more details on methodology). The BLM has applied the definition of sustained yield as intended under the O&C Act: to provide for a maintainable level of harvest, guarding against the overcutting that the O&C Act sought to end. PRMP/FEIS, pp. 1914.

The alternatives analyzed in the Draft RMP/EIS would result in sustained-yield harvest levels that would range from 120 MMbf to 486MMbf per year. These alternatives cover the full spectrum of reasonable alternatives to accomplishing the stated purpose and need for action.

PRMP/FEIS, p. 1987. The protester has not explained how the alternatives in the PRMP/FEIS fail to respond to opposing viewpoints pertaining to sustained yield.

Area Designations for OHV

BLM planning guidance defines the purpose of each level of decision-making in the context of travel management. At the land use plan level, each RMP must assign area designations to all public lands within the planning area, and classify them as open, limited, or closed to motorized (OHV) use. The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of off-road vehicle use areas (43 CFR § 8342.2(b)).

Implementation-level decisions include identification of specific areas, roads, and trails that will be available for public use, and placing limitations on use. BLM Handbook H-1601-1, Appendix C, p. 19.

The BLM is designating areas based on 43 CFR 8342 for “open,” “limited,” and “closed” for motorized uses. The BLM is not designating use on individual routes at this time. Consistent with current BLM policy (BLM Manual-1626) which outlines the BLM’s policies for travel and transportation management planning in the land use planning process consistent with 43 CFR 8342, the BLM is deferring implementation-level travel management planning during the current planning effort. PRMP/FEIS, p. 776. For areas designated as limited, the BLM would designate individual routes through subsequent, implementation-level travel management planning the types or modes of public travel, the limitations on time or season of use, the limitations to certain types of vehicles, the limitations on specific public routes, or limitations of other types (PRMP/FEIS, p. 779).

The BLM has not violated NEPA by conducting a broad-scale planning effort to be followed by implementation-level planning in the future. The BLM based the motorized use designations on protection of resources, promotion of safety for all users, and minimization of conflicts of users of BLM-administered lands, which is consistent with EO 11644 and 11989. PRMP/FEIS, p. 779. Furthermore, the BLM is not authorizing additional use or changing existing uses in this planning effort. The BLM considered existing uses as part of the description of the affected environment sections in Chapter 3.

The effects of the transportation network were analyzed in Chapter 3 of the PRMP/FEIS. The PRMP will direct, through the management direction, how the BLM will manage the trails and transportation network on all districts. PRMP/FEIS, Appendix B. Management objectives and direction include protection of resources and application of best management practices (PRMP/FEIS, Appendix J). For example, the BLM will implement road improvements, storm proofing, maintenance or decommissioning; mitigate recreational impact on resources; and protect fragile and unique resource values (PRMP/FEIS, pp. 1134, 1137, 1147, 1152). The BLM will manage public motorized vehicle use according to interim management guidelines until subsequent comprehensive implementation-level travel management plans are complete (PRMP/FEIS, p. 1152).

Riparian Reserve & Retention Standards

The BLM analyzed a two-tree width Riparian Reserve in the No Action alternative. The BLM disclosed the results of the analysis throughout Chapter 3 of the PRMP/FEIS. The BLM does not identify the need for a two-tree width Riparian Reserve as a purpose and need of the Western Oregon RMP effort. PRMP/FEIS, pp. 5-10.

The NEPA and FLPMA do not require the BLM to establish any particular standards for tree size retention. The BLM has disclosed the information necessary and relevant to distinguish between alternatives necessary to make an informed decision.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts in the Western Oregon PRMP. The BLM adequately analyzed and disclosed effects to resources that allows for a reasoned choice among the alternatives; appropriately analyzed sustained yield; complied with existing policy by designating OHV use; evaluated a two-tree width Riparian Reserve alternative; and provided necessary implementation standards.

NEPA – Effects Analysis – Forest Management

Issue Number: PP-OR-RMPforWOr-16-12-146

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM says, “Under the Proposed RMP, salvage harvesting would be permissible to recover economic value or minimize economic loss only in the Harvest Land Base.” BLM has not provided a rational explanation or legal basis for allowing large-scale salvage logging in the harvest land base in light of the available evidence and the applicable legal requirements.

Issue Number: PP-OR-RMPforWOr-16-12-151

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM fails to quantify when and where post-disturbance salvage logging in reserves would be allowed in order to “keep roads clear of debris.” There have been recent incidences in Western Oregon of the BLM implementing post-disturbance roadside “hazard” logging up to 200’ feet on the downhill side of logging roads, in which trees were removed that could never reach a roadway due to the laws of physics and gravity. The BLM fails to disclose whether clear-cut salvage logging of alleged “hazards” will be allowed in streamside forests adjacent to roads. The proposed RMP fails to disclose the circumstances, effects or side-boards that would accompany roadside salvage logging in reserves. Will “green” trees be removed as part of the roadside logging process in reserves? Will roadside salvage logging

occur in roads that have been closed within forest reserves?

Issue Number: PP-OR-RMPforWOr-16-12-152

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Based on current ecological science, the FEIS/PRMP should – but does not – disclose that prohibiting post-disturbance salvage logging in all reserves (only allowing felling of imminent hazard trees in areas of high public use) is the scientifically supported way to meet the stated objectives for these reserves.

Issue Number: PP-OR-RMPforWOr-16-12-156

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Proposed BLM direction in the FEIS (at 1903 and elsewhere) indicates that “[t]he ability to conduct salvage harvest for purposes of protecting human health and safety within the dry forest would be available under all alternatives.” This authority would appear to allow widespread logging impacts that are neither analyzed nor disclosed in the FEIS. While we support felling of real and imminent hazard trees in areas that are frequently used by workers and the public (e.g., in developed recreation sites and along paved roads), the PRMP fails to limit hazard tree removal as an excuse for commodity extraction in areas that are not a high priority for hazard removal (e.g., remote locations where people visit infrequently and/or risk exposure is brief periods such as passing by large snags along a remote road

or trail). This failure is inconsistent with the law and the available evidence.

Issue Number: PP-OR-RMPforWOr-16-12-158

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The EIS also fails to fully analyze and disclose the following issues concerning post-disturbance logging:

- Adverse impacts to soil, such as erosion, compaction, displacement, litter disturbance, nutrient depletion; loss of chemical buffering; loss of soil organic matter; loss of burrowing wildlife that help aerate soils; reduction of nitrogen fixing plants that boost soil fertility; loss of slope and snow stabilizing effects which could lead to mass wasting or eliminate mechanisms that may mitigate mass wasting;
 - Loss of down wood functions such as trapping sediment and aiding water infiltration, and creating microsites favorable for germination and establishment of diverse plants, and habitat for diverse wildlife;
 - Loss of decaying wood and depletion of the “savings account for nutrients and organic matter” which affects site productivity through the removal of dead trees which store nutrients and slowly release them to the next stand. Marañón- Jiménez, S., Fernández-Ondoño, E., and J. Castro. 2013. Charred wood remaining after a wildfire as a reservoir of macro- and micronutrients in a Mediterranean pine forest (International Journal of Wildland Fire, <http://dx.doi.org/10.1071/WF12030>)(“Partially charred wood represented a considerable pool of nutrients, due to both the relatively high concentrations and to the great amount of biomass still present after the fire. Potential contributions of the charred wood were particularly relevant for N and micronutrients Na, Mn, Fe, Zn and Cu, as wood contained 2–9 times more nutrients than the soil. Post-fire woody debris constitutes therefore a valuable natural element as a potential source of nutrients, which would be lost from ecosystems in cases where it is removed”)
- Recent studies indicate that wood may release nutrients more rapidly than previously thought through a variety of decay mechanisms mediated by means other than microbial decomposers, i.e., fungal sporocarps, mycorrhizae and roots, leaching, fragmentation, and insects;
 - Loss of nutrients from live trees that are determined to be “dying.” Live trees produce serve as refugia for animals, invertebrates, and mycorrhizae; produce litter fall; and help cycle nutrients which are all extremely valuable in the post-fire landscape;
 - Loss of wood that serves to buffer soil chemistry and prevent extreme changes in soil chemistry;
 - Water quality degradation;
 - Loss of water storage capacity in down logs;
 - Altered timing of storm run-off which could lead to peak flows that erode stream banks and scour fish eggs;
 - Delaying the pace of vegetative recovery and reducing the quality/diversity of the vegetation community;
 - Dead trees serve as a natural fence that protects young seedlings from browse by cattle and big game. This is one way that young aspen and other valuable species can get their start;
 - Spread of invasive weeds through soil disturbance and extensive use of transportation systems;
 - Loss of legacy structures that can carry species, functions, and processes over from one stand to the next;
 - Loss of terrestrial and aquatic habitat (mostly snags and down logs) potentially harming at least 93 forest species (63 birds,

26 mammals, and 4 amphibians) that use snags for nesting, roosting, preening, foraging, perching, courtship, drumming, and hibernating, plus many more species that use down logs for foraging sites, hiding and thermal cover, denning, nesting, travel corridors, and vantage points for predator avoidance;

- Depletion of large wood structures in streams that can cause: 1) simplification of channel morphology, 2) increased bank erosion, 3) increased sediment export, 4) decreased nutrient retention, 5) loss of habitats associated with diversity in cover, hydrologic patterns, and sediment retention;
- Commercial salvage usually removes the largest snags, but this will disproportionately harm wildlife because: (1) larger snags persist longer and therefore provide their valuable ecosystem services longer and then serve longer as down wood too, and (2) most snag-using wildlife species are associated with snags >14.2 inches diameter at breast height (dbh), and about a third of these species use snags >29.1 inches dbh.
- Truncation of symbiotic species relations and loss of biodiversity. Sixteen species are primary cavity excavators and 35 are secondary cavity users; 8 are primary burrow excavators and 11 are secondary burrow users; 5 are primary terrestrial runway excavators and 6 are secondary runway users. Nine snag-associated species create nesting or denning structures and 8 use created structures.
- Reduced avian and terrestrial species diversity, which affects plant and invertebrate diversity. Since different wildlife help disperse different sets of seeds and invertebrates, reduced wildlife diversity can significantly affect pace of recovery and the diversity of the regenerating stand. Snag-associated wildlife play a greater role in dispersal of invertebrates and plants, while down wood-associated wildlife play a greater role in dispersal of fungi and lichens.

Down wood-associated species might contribute more to improving soil structure and aeration through digging, and to fragmenting wood, which increases surface area encouraging biological action that releases nutrients.

- Loss of partial shade that helps protect the next generation of forest;
- Loss of cover quality and fawning areas for big game;
- Loss of future disturbance processes such as falling snags that help thin and diversify the next generation of forest;126
- Increased human activity and human access that can increase fire risk;
- Increased fine fuels on the forest floor that can cause an increase in fire hazard;
- Loss of seed sources, and
- Loss of diversity of vegetation and microsite conditions.
- The fact that regional standards for snags and down wood fail to incorporate the most recent science indicating that more snags and down wood (especially large snags and logs) are required in order to maintain species viability and sustain site productivity.
- Arguments in support of the “reburn hypothesis” are specious. (1) partial reburn may be completely natural and desirable in some cases to consume some fuel and diversify the regenerating forest, and (2) salvage logging will cause a pulse of fine fuels on the ground and actually increase the reburn risk/hazard above natural levels, and (3) fuels that fall to the ground over time will to some extent decay as they fall.
- Uncertainty calls for a cautious approach.

Issue Number: PP-OR-RMPforWOr-16-12-164

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The minimal post-disturbance salvage logging retention guidelines for forest stands in the Harvest Land Base appear to allow for and encourage logging of green trees that survived the disturbance event. The FEIS makes no attempt to quantify, analyze or disclose the impacts of green tree logging in post-disturbance stands. Surviving trees contribute to soil stabilization, provide a seed source, wildlife habitat and watershed benefits in post-disturbance forest stands. The FEIS provides no parameters or guidance regarding the removal of such trees and fails to analyze or disclose the impacts of post-disturbance green tree logging.

Issue Number: PP-OR-RMPforWOr-16-46-4

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: This statement is prima facie false, denigrates the science of the FEIS, and is legally indefensible. Further, making these terms synonymous fails to present a true picture of BLM public lands. Clearly, for example, set-asides, withdrawals, LWCs, etc. are part of the “annual productive capacity” but will not be included in the “allowable sale quantity.” BLM must distinguish these terms to provide a truly transparent plan to the public.

Issue Number: PP-OR-RMPforWOr-16-10-11

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: ...if the rate of harvest on private timberlands is unsustainable then BLM must adjust its allowable sale

quantities (ASQ) calculations downward to ensure that the overall supply of timber and other goods and services from all Oregon’s forestlands comes closer to a level that is commensurate with maintaining permanent forest production and the principle of sustained yield. If BLM fails to do this, then it will be exacerbating rather than countering the effects of overharvesting on lands outside its jurisdiction.

Issue Number: PP-OR-RMPforWOr-16-12-119

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP did not address comments showing that the benefits of logging to reduce fire hazard are vastly over-estimated.

Issue Number: PP-OR-RMPforWOr-16-12-149

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS does not fully and accurately describe the benefits of retaining large dead trees and the benefits of natural recovery after natural disturbance, nor does the FEIS fully and accurately describe the adverse effects of salvage logging.

Issue Number: PP-OR-RMPforWOr-16-12-150

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The direct and cumulative ecosystem impacts of logging up to 95% of green trees and snags in post-disturbance logging units within the Harvest

Land Base is not fully analyzed or disclosed. The significant direct and cumulative impacts of fiber plantation establishment in salvage logged stands on fire hazard and fire behavior is not fully analyzed and disclosed.

Issue Number: PP-OR-RMPforWOr-16-12-153

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM also has failed to take a hard look at the issues of snag habitat and complex young forests by considering the dynamics of snags and dead wood in natural forests. Natural young forests are typified by large amounts of dead wood. Salvage logging results in atypical and undesirable ecological conditions

Issue Number: PP-OR-RMPforWOr-16-12-154

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Unsalvaged, naturally regenerated, young stands are one of the rarest forest types in the Pacific northwest, and their biodiversity rivals that of old-growth forests but BLM has failed to consider or implement measures that retain disturbance-created complex early seral habitat on BLM forest lands contrary to the available scientific evidence.

Issue Number: PP-OR-RMPforWOr-16-12-162

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS acknowledges that the timber industry is inherently volatile and timber production

causes community instability. The proposed unquantified and unanalyzed salvage logging program within the harvest land base will amplify these adverse effects by creating unpredictable temporary pulses in log supply.

Issue Number: PP-OR-RMPforWOr-16-12-165

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP's consideration of the effects of post-fire salvage logging is incomplete and inaccurate and the BLM's proposed RMP based on this inadequate analysis is arbitrary and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-12-168

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The PRMP protects trees that are large and old in certain land allocations (RTC 178, FEIS/PRMP at 1918). BLM does not explain why it refused to extend this protection to all old trees regardless of size. Small old trees are ecologically valuable and resilient. They have put more resources into defensive compounds rather than growth and they should be retained. BLM did not take a hard look at the ecological consequences of losing these unique traits in the ecosystem.

Issue Number: PP-OR-RMPforWOr-16-12-181

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS failed to adequately analyze how motorized use needs to be effectively controlled to limit the spread of Port Orford Cedar root disease.

Issue Number: PP-OR-RMPforWOr-16-12-70

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Spies et al. 2013:13 reports that a 60 foot no cut buffer with thinning in the remaining 190 feet would result in only 58% of large wood recruitment into streams as compared to a 250' no cut buffer (1 tree height). Figure 11 from Spies et al. 2013 is reproduced below. The PRMP would substantially reduce future wood to important headwater streams by about 50% with only a 50 ft. no cut buffer. This amount of reduction is contrary to law and the stated purpose and need of the PRMP (i.e., the thinning in the outer zone would not meet the purpose of the PRMP to recover listed species and provide clean water). In addition, the actual impacts of the outer zone thinning are not accurately reported in the FEIS, thus misleading the decision maker and the public.

Issue Number: PP-OR-RMPforWOr-16-12-90

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The current FEIS/PRMP analysis is mostly limited to a projection of the abundance of various forest structural stages, while failing to fully consider other important attributes and indicators of ecosystem integrity. For instance, providing the historic abundance of structurally complex forests does not ensure support for healthy populations of wildlife if

the habitat is fragmented and not arranged in an appropriate spatial pattern. BLM's analysis asks: "What levels of habitat would be available under each alternative for [special status] species." In the FEMAT report and 1994 FSEIS, "The evaluation of late-successional and old-growth forest ecosystems is expressed as an expected likelihood of achieving long-term conditions based on three attributes that characterize the quantity and quality of the ecosystem" (1994 FSEIS Vol. I pp. 2-68). Those three attributes are: (1) abundance and diversity, (2) process and function, and (3) connectivity. BLM has not explained why it need not address these same or very similar factors in assessing the effectiveness of the PRMP. BLM has not taken a hard look at the degraded state of the reserves and the inability of those degraded forests to support rare and uncommon wildlife, and keep them off of the list of threatened & endangered species. BLM's approach undermines community stability, adds uncertainty to timber goals and is otherwise arbitrary and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-16-13

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: The Proposed RMP assigns watershed use restrictions across its landscape. It appears that the BLM has elected to classify the entire Coquille Forest as a Class 1 Sub-watershed, which is the most restrictive category available under the Proposed RMP. In reviewing the zone specific management direction applicable to Class 1 subwatersheds, the impacts of this designation on management of the Coquille Forest are not clear and the BLM provides no justification or information to support

such subwatershed designation nor how it is consistent with its trust responsibility.

Issue Number: PP-OR-RMPforWOr-16-31-2

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: The BLM has failed to adequately examine and disclose the adverse effects of increased logging and clear-cuts, especially in mature forests, with regards to habitat for fish and wildlife, water quality, erosion, carbon storage, and recreation. The proposal violates NEPA by failing to take a “hard look” at these impacts and by providing an inadequate analysis.

Summary:

BLM has not analyzed the effects of the Western Oregon PRMP/FEIS related to Forest Management because:

- salvage logging has not been analyzed in the Harvest Land Base, including in riparian reserves (reducing the no-cut zone), to protect human life, and to reduce fire hazard;
- BLM must adjust its allowable sale quantities (ASQ) calculations to compensate for use on private lands;
- BLM failed to analyze the dynamics of snags;
- BLM failed to analyze the complex early seral habitat on BLM forest lands;
- BLM failed to adequately analyze how motorized use needs to be effectively controlled to limit the spread of Port Orford Cedar root disease;
- BLM has not taken a hard look at the degraded state of the reserves and has not analyzed the impacts of the use of old growth forest on wildlife, water quality, erosion, carbon storage, and recreation; and
- BLM has inadequately described the impact of classifying the Coquille forest as a Class 1 Watershed.

Response:

The BLM considered all relevant, appropriate, and available information relevant to Forest Management in the Western Oregon PRMP/FEIS. The BLM must use information of high quality and scientific integrity in its NEPA analyses, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the PRMP.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all

conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Salvage Logging

The Proposed RMP prohibits salvage logging after disturbances in the Late-Successional Reserve and Riparian Reserve, except when necessary to protect public safety, or to keep roads and other infrastructure clear of debris (Appendix B – Management Objectives and Direction). In the Harvest Land Base, the Proposed RMP directs timber salvage harvest after disturbance events, with restrictions and requirements, to recover economic value and to minimize commercial loss or deterioration of damaged trees. The management objectives for the Harvest Land Base focus on timber production, and specifically include recovering economic value from timber harvested after disturbance, such as a fire, windstorm, disease, or insect infestations. Therefore, it would be inconsistent with the management objectives to prohibit timber salvage in the Harvest Land Base. The BLM forecasted salvage harvest in the Harvest Land Base in the vegetation modeling. The BLM would implement such salvage harvest in the Harvest Land Base consistent with management direction regarding retention of live trees and snags and reforestation (Appendix B – Management Objectives and Direction).

The Draft RMP/EIS included varied approaches to salvage harvest after disturbances such as wildfire (USDI BLM 2015, pp. 41–74). Under the Proposed RMP, salvage harvesting would be permissible to recover economic value or minimize economic loss only in the Harvest Land Base. The Proposed RMP would prohibit salvage harvesting in Riparian Reserve and Late-Successional Reserve, except where necessary to protect public safety or to keep roads and other infrastructure clear of debris.

NEPA does not require an encyclopedic analysis of every topic associated with a particular action or resource. The BLM provided a focused analysis based on the identified issues and provided an extensive analysis for each issue in Chapter 3 of the PRMP/FEIS. Each analyzed alternative includes post-disturbance logging, thus it was included in the effects analysis presented in Chapter 3 of the PRMP/FEIS. Management of snags and large down wood is addressed in Appendix B - Management Objectives and Direction of the PRMP/FEIS.

The FEIS (p. 1078) defines “salvage harvesting” as removal of dead, damaged, or dying trees. The analysis of salvage harvesting does not address green tree removal because green tree removal (unless damaged or dying trees are still green) is not part of salvage harvesting. For the same reason, parameters or guidance on post-disturbance removal of green trees are not addressed. The BLM provided guidance on tree retention within salvage harvest units in Appendix B (PRMP/EIS, pp. 1102, 1109, 1110, 1112). Green tree removal is analyzed as regeneration harvest or thinning.

The Proposed RMP includes management objectives and management direction related to the management of fire as a process on the landscape, including management to restore and maintain ecosystem resilience to wildfire, including the application of prescribed fire, and responding to wildfires in a manner that provides for public and firefighter safety, while meeting land management objectives (Appendix B – Management Objectives and Direction).

Allowable Sale Quantities (ASQ)

The alternatives contain various potential restrictions on timber harvest in the Harvest Land Base that could influence the calculation of the ASQ. The restrictions in the action alternatives and the Proposed RMP include site protection for northern spotted owls, protection of future marbled Murrelet sites, protection of future North Coast DPS red tree vole sites, management of Wild and Scenic Rivers, Visual Resource Management, and Recreation Management Areas. The calculation of the ASQ in this analysis predicted the quantitative effects of some of these potential restrictions. However, other potential restrictions, including use on private land, are too uncertain to incorporate into the calculation of the ASQ.

Dynamics of Snags

The alternatives in the Draft RMP/EIS explored a variety of snag retention and creation requirements. Alternatives B and D included snag retention and creation targets based on the desired conditions for wildlife species as interpreted from the Decayed Wood Advisor (DecAID) (Mellen-McLean et al. 2012) in conjunction with estimates of the current abundance of snags and down wood from the CVS inventory plots (see the Snags and Down Woody Material section of Appendix S –Other Wildlife). The BLM maintains that the information from DecAID and CVS inventory plots provides information that better reflects the needs of snag-dependent species than the snag retention requirements in the 1995 RMPs. The Proposed RMP includes the snag retention and creation targets similar to Alternatives B and D.

The management direction for Alternatives B and D clearly requires the retention of existing snags and separately requires the creation of new snags, independent of the amount of existing snags (USDI BLM 2015, pp. 962, 984). The Proposed RMP includes the snag retention and creation targets similar to Alternatives B and D.

Early Seral Habitat

All alternatives and the Proposed RMP would increase the amount of early successional forest habitat in 50 years and the BLM recognizes the distinction between complex and simple early seral forest habitats. The structural stages used throughout the analyses in the Proposed RMP/Final EIS have two categories of early seral habitat: Early Successional Forests with Structural Legacies and Early Successional Forest without Structural Legacy. The BLM regards Early Successional Forest with Structural Legacies as analogous to complex early successional habitat as described by DellaSala et al. (2014) and Swanson et al. (2011). In addition, management direction regarding green tree retention, snag retention (or creation), and down woody material retention would add to the complexity of that early successional habitat.

Port Orford Cedar Root Disease

As explained in the Draft RMP/EIS, the BLM would continue to apply management of Port-Orford-Cedar in accordance with the Record of Decision and Resource Management Plan Amendment of Management of Port-Orford-Cedar in Southwest Oregon, Coos Bay, Medford, and Roseburg District (USDI BLM 2004), and the Draft RMP/EIS incorporated the analysis conducted for the 2004 Port-Orford-cedar ROD by reference (USDI BLM 2015, p. 23). The implementation of the Proposed RMP is well within the bounds of outcomes considered in the 2004 ROD for Port-Orford-cedar management. The road construction projected under the Proposed RMP would be less than road construction projected under the No Action alternative

(see the Trails and Travel Management section in Chapter 3), and is within the range of effects considered in analysis for the 2004 Port-Orford-Cedar ROD. The Standards and Guidelines in the 2004 Port-Orford-cedar ROD describe all currently available disease-control practices, dividing them between those that should be applied generally (e.g., community outreach and restoration) and those that may, depending on site conditions, be applied to specific management activities (e.g., road construction and timber sales). For the latter group, the 2004 Port-Orford-cedar ROD includes a risk key to clarify the environmental conditions that require implementation of one or more of the listed disease-controlling management practices (USDI BLM 2004, pp. 32–37). Under all alternatives and the Proposed RMP, the BLM would apply the risk key during site-specific project planning. This approach precludes the need for additional project-specific analysis of mid-and large-geographic and temporal-scale effects, because the risk key describes conditions where the BLM would apply risk reduction management practices. Additionally, the BLM’s experience with these risk reduction management practices show they are currently the best approach for controlling POC root rot. This planning process, including public comment, did not identify any needed revision to the risk key or any new risk reduction practices that should be added to the current approach.

Effects on Wildlife, Water Quality, Erosion, Carbon storage, and Recreation

The PRMP/FEIS described and analyzed the potential impacts of the Alternatives on T&E species, Bureau Sensitive Species, as well as other focal species in the Wildlife section of Chapter 3 (USDI BLM 2015, pp. 825-1018). Similarly, potential impacts to water quality and erosion were analyzed in the Hydrology section of Chapter 3 (USDI BLM 2015, pp.369-418); impacts to recreation were described in the Recreation and Visitor Services section of Chapter 3 (USDI BLM 2015, pp. 555–586); and carbon was discussed in the Climate Change section of Chapter 3 (USDI BLM 2015, pp. 165–212) and in Appendix G (pp. 1295-1303).

In summary, the Proposed RMP would lead to an increase in habitat for a majority of Bureau Sensitive, Bureau Strategic, Survey and Manage wildlife species in 50 years. Under the Proposed RMP, the distribution of structural stages in the decision area in 50 years would be within the range of the average historic conditions, increasing the habitat availability for many Bureau Sensitive, Bureau Strategic, and Survey and Manage species. Although the Proposed RMP would include the Survey and Manage standards and guidelines, there would be sufficient habitat to support stable populations for most of the Survey and Manage wildlife species.

BLM did analyze potential sediment delivery under each Alternative, by projecting the risk of landslides by measuring relative landslide density using the GIS mass wasting hazard model within NetMap (Miller 2003, Miller and Benda 2005, and Miller and Burnett 2007a). The NetMap model produces a naturally occurring landslide susceptibility from geologic and landform factors, but independent of vegetation factors. The modeling is based on landslide inventories from the Coast Range, Western Cascades, and Klamath physiographic provinces. The model produces a spatially distributed estimate of landslide density by mathematically matching observed landslide locations with topographic attributes including slope, convergence (bowl-shaped landforms), and watershed area, using a digital elevation model. The BLM used the channelized mass wasting delivery model in NetMap to determine susceptible areas from the hill slope relative landslide density that could deliver to any stream channel (USDI BLM 2015, p. 394). Additionally, BLM analyzed potential sediment delivery by comparing surface erosion for

existing roads and the projected new roads under each alternative and the Proposed RMP. Sediment delivery from roads can result from surface erosion, gullying, and mass wasting. However, due to limitations of model capability and geospatial processing across the planning area, this discussion is restricted to surface erosion from roads.

The Oregon Department of Environmental Quality (ODEQ) regulates effects to water quality, and the BLM would remain compliant with those regulations. Under all alternatives the Proposed RMP, the BLM would:

- Maintain water quality and stream flows within the range of natural variability, protect aquatic biodiversity, and provide quality water for contact recreation and drinking water sources;
- Meet ODEQ water quality targets for 303(d) water bodies with approved Total Maximum Daily Loads;
- Maintain high-quality water and contribute to the restoration of degraded water quality downstream of BLM-administered lands; and
- Maintain high-quality waters within ODEQ designated source water protection watersheds (USDI BLM, p 812).

The BLM has developed a Proposed RMP that increases protection of the unique recreation settings and increases recreation use. Appendix O (USDI BLM 2015, pp. 1489-1502) provides a comprehensive list of recreation management areas that the BLM is designating under the Proposed RMP. Recreation Management Frameworks describe the important recreation values, recreation outcome objectives, supporting management actions and allowable use activities for each recreation management area evaluated. The Recreation Management Frameworks also describe the types of visitor use for which the BLM would be managing recreation in that recreation management area.

The analysis of net carbon storage estimated the amount of carbon stored in the forest and in harvested wood products as well as carbon stored in non-forest portions of the decision area. The analysis divided carbon into three pools:

1. Live and dead vegetation
2. Soil to 1 m depth (3.3 ft.)
3. Harvested wood

The BLM summed the carbon in these three pools to estimate the total net carbon stored by alternative and the Proposed RMP. The BLM assumed carbon stored in soil and in non-forest portions of the planning area was constant through time, largely due to the lack of information about how these pools change over time (Appendix G, p. 1295).

The BLM has determined that the carbon analysis presented in the PRMP/FEIS is based on the best available information, is consistent with current theoretical approaches, and is sufficient for the purposes of making a reasoned choice among the alternatives.

The Proposed RMP manages the Riparian Reserve differently by watershed classes. In Class I sub-watersheds, the Riparian Reserve along fish-bearing and perennial streams would have an

inner zone of 0–120 feet; on non-fish-bearing intermittent streams, the inner zone would be 0–50 feet. The BLM would not conduct thinning within these inner zones except for sudden oak death treatments and individual tree cutting or tipping as described in the management direction. The middle zone for non-fish-bearing streams is 50–120 feet. The BLM would conduct thinning within this zone for the purposes of providing wood to streams. Removal of cut trees would only be allowed for safety or operational reasons. The outer zone for fish-bearing and perennial streams and non-fish-bearing intermittent streams is 120 feet to one site-potential tree height. The BLM would conduct thinning in the outer zone for the purpose of providing wood to streams (USDI BLM 2015, p. 804).

Coquille Forest

The Coquille Forest managed by the Coquille Tribe is “subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future” per Title V of the Oregon Resource Conservation Act of 1996 (Public Law 104-208). This means that the adopted BLM RMP that applies to the Coos Bay District will also apply to the Coquille Forest in that it will establish the suite of possible management approaches available for the Coquille Forest. However, the BLM RMP will not determine which specific land use allocations, including sub-watershed classes, apply to which specific portions or locations of the Coquille Forest, or the rate or extent of timber harvest on the Coquille Forest (USDI BLM 2015, p. 808).

NEPA – Effects Analysis – Fire and Fuels

Issue Number: PP-OR-RMPforWOr-16-08-10

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The DFPA correctly noted the risk of fire is shared in the O & C checkerboard and that it is “imperative that all landowners take significant and timely actions to reduce the risk of large high severity fires in the future.”

The PRMP/FEIS simply fails to address how the proposed action alternative effectively reduces the risk not only to the BLM lands but also to the neighboring private lands in the checkerboard.

Issue Number: PP-OR-RMPforWOr-16-08-12

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: While the BLM asserts there would be no difference between alternatives relative to wildfire response, it is ignoring that the differences are there given the variations in Late Successional Reserves; post fire management of Late Successional Reserves; snag retention; and, the variations in road systems. The BLM needs to address more than just fire resilience but also wildfire response both in the context of active fire as well as post fire activities.

Issue Number: PP-OR-RMPforWOr-16-12-121

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM also fails to account for the well-recognized increased fire risk caused by regeneration harvest. Allegedly reducing fire hazard in dry forests does not compensate for widespread increase in fire hazard in moist forests from regeneration harvest. See RTC 5, FEIS/PRMP at 1836-37. BLM takes credit for thinning that it says will reduce fire hazard in dry forests, see RTC 122, FEIS/PRMP at 1898-99, but fails to take a hard look at the fact that regeneration harvest in moist forest under the PRMP will create fuel types that are less resilient and more susceptible to high severity fire. The failure to address this issue was discussed in detail in public comments and is arbitrary and capricious. Treating activity fuels will not change the fact that regeneration harvest followed by replanting of conifers will create fuel profiles that are dense, spatially contiguous, and close to the ground.

Issue Number: PP-OR-RMPforWOr-16-12-124

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS also fails to reflect use of the best available information indicating that greater time-since-fire actually increases fire resistance. That is, fires are likely to burn more severely in forests that have been more recently logged or burned, and are likely to burn less severely in closed-canopy forests that have not been recently logged or burned. This may be related to the fact that closed canopy forests maintain a cool- moist microclimate that helps retain higher fuel moisture and more favorable fire behavior. Canopy cover also helps suppress the growth of ladder

fuels. The significance of this is that it may make sense to variably retain more canopy cover while thinning and limiting treatment of canopy fuels except to provide some well-spaced “escape hatches” for hot gases generated by surface fires. The FEIS/PRMP, however, does not address or consider this highly relevant issue.

Issue Number: PP-OR-RMPforWOr-16-12-126

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP does not address several serious flaws identified in public comments on the DEIS. For example, the FEIS over-estimates the value of logging and under-estimates the value of forest conservation with respect to fire hazard.

Issue Number: PP-OR-RMPforWOr-16-12-150

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The direct and cumulative ecosystem impacts of logging up to 95% of green trees and snags in post-disturbance logging units within the Harvest Land Base is not fully analyzed or disclosed. The significant direct and cumulative impacts of fiber plantation establishment in salvage logged stands on fire hazard and fire behavior is not fully analyzed and disclosed.

Issue Number: PP-OR-RMPforWOr-16-12-161

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS fails to fully disclose and analyzes other information which shows that salvage logging will increase fire hazard via post-disturbance logging in the harvest land base:

“The slash created by the harvest and fuels treatments that is left on the ground for site protection and future site productivity, would create a short term (zero-eight years) fire hazard. The fuel-bed created by these treatments would be, in large part, comprised of material in the smaller size classes. These fuels would contribute to the flammability and continuity of fuels on a local level, as well as across the landscape. Under good burning conditions, fires burning in these slash fuel types have the potential to spread rapidly and extensively” (Bitterroot NF Burned Area Recovery DEIS, p. 3-12).

“There's no science that demonstrates re-burn potential in areas where there is downed wood or decayed wood.”
Craig Bobzien, Bitterroot NF Acting Supervisor (Missoula Independent, July 19, 2001).

“We found no studies documenting a reduction in fire intensity in a stand that had previously burned and then been logged” (Environmental Effects of Postfire Logging (USDA Forest Service, 2000)).

“[We] are aware of no evidence supporting the contention that leaving large dead wood material significantly increases the probability of reburn” (Wildfire and Salvage Logging (Beschta, et al., Oregon State University, 1995)).

“The removal of large, merchantable trees from forests does not reduce fire risk and may, in fact, increase such risk” (Dept. of Agriculture and Interior, Report to the President (September 2000)).

The best available science indicates that salvage logging increases small fuels that are most hazardous, and reduces large wood which is most valuable to wildlife.

Our study examined fuel succession patterns by surveying downed woody fuels across a chronosequence of dry coniferous forest stands that burned with high fire severity (95–100% overstory tree mortality) within mixed- and high-severity wildfires in eastern Washington and Oregon, USA, between 1970 and 2007. We sampled forests in which ponderosa pine (*Pinus ponderosa*) and Douglas-fir (*Pseudotsuga menziesii*) are the dominant early-seral tree species ... Relative to unlogged stands, post-fire logging initially increased surface woody fuel loads, increasing small diameter fuel loads by up to 2.1 Mg/ha during the first 5 years after fire and increasing medium diameter fuel loads by up to 5.8 Mg/ha during the first 7 years after fire. Logging subsequently reduced surface woody fuel loads, reducing large diameter fuel loads by up to 53 Mg/ha between 6 and 39 years after wildfire ... The initial pulse of elevated surface fuels in logged stands was expected under our first hypothesis. Post-fire logging transfers woody debris in tree branches and tops from

the canopies of fire-killed trees to the forest floor, producing well-documented conditions of higher surface woody fuels in logged stands than in unlogged stands in the first 1–4 years following logging (Donato et al., 2006, 2013; McIver and Ottmar, 2007; Monsanto and Agee, 2008; Keyser et al., 2009). Higher amounts of surface woody fuels – especially small and medium diameter woody fuels – can increase short-term fire hazards in logged stands by increasing potential rate of spread and fire-line intensity ... Post-fire logging was most effective for reducing large diameter surface fuels, consistent with our second hypothesis. By removing tree boles, post-fire logging reduced maximum large diameter fuel loadings and produced a long period of reduced large diameter fuels, including both sound and rotten fuels. Although large diameter fuels may contribute little to fire spread rates (Hyde et al., 2011) and are typically disregarded in fire behavior modeling.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on fire and fuels, particularly from neighboring private lands, fuels in moist forests, time-since-fire as it relates to fire resistance, and active and post-fire management including post-fire logging and fire hazards.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761, 9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their

comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes fire and fuels of the planning area in Volume 1, pp. 223-271. The PRMP/FEIS describes the methods, tools, and assumptions used to evaluate fires and fuels for the planning area. Appendix H contains the further assumptions and methods for Issues 1 through 3, listed below (PRMP/FEIS, Appendix H, pp. 1305-1330).

- Issue 1: *How would the alternatives affect fire resiliency in the fire-adapted dry forests at the landscape scale?*
- Issue 2: *How would the alternatives affect fire resistance in the fire-adapted dry forests at the stand level?*
- Issue 3: *How would the alternatives affect fire hazard within close proximity to developed areas?*

The BLM responded to many of these same fire and fuels protest statements in the PRMP/FEIS (PRMP/FEIS, pp. 1897-1908 (App. W)).

The Oregon Department of Forestry currently provides fire protection and prevention services on Western Oregon BLM-administered lands under the Western Oregon Fire Protection Services contract. The selected alternative in the PRMP/FEIS would continue to manage wildfire response consistent with current Federal wildland fire policy (USDA and USDI 2009, USDI BLM *et al.* 2015). All alternatives provided for a continuing need for wildfire suppression and fire risk mitigation, given the checkerboard land ownership pattern and those large portions of the decision area lie within 1 mile of human developed areas. PRMP/FEIS, p. 1905. The PRMP/FEIS also includes management direction to apply the full range of fire management options in responding to natural ignitions or escaped prescribed fires as stated in Appendix W (PRMP/FEIS, p. 1897).

The BLM addressed the comments regarding the differences in Late-Successional Reserves, post-fire management of Late-Successional Reserves, snag retention, variations in road systems,

and wildfire response to active and post-fire management in the PRMP/FEIS Appendix W PRMP/FEIS, pp. 1858, and 1903. The BLM explained that there is no basis upon which these factors would differ under the alternatives in a way that would measurably or meaningfully affect wildfire management. All of these factors represent a very small portion of the overall landscape (PRMP/FEIS, p. 1858).

The effect of fuels in moist forests was not analyzed in detail because none of the alternatives or the PRMP would have a significant effect on fire severity in moist forests. Historically, fire was not an important frequent change agent acting to influence stand structure distribution of these forested ecosystems as natural ignitions, weather, and fuel conditions to support fires in these areas rarely aligned (PRMP/FEIS, p. 224).

The PRMP/FEIS analyzed the effects of the alternatives on fire resistance and fire hazard and used the best available information including the reference cited by the protestor, Odion et al. (2004). Overall, the BLM determined that the BLM-administered lands constitute only a small portion of the entire interior/south dry forest landscape (PRMP/FEIS, p. 223). Consequently, the modest shifts in forest structure and composition under any alternative or the PRMP would not result in any substantial change in the overall landscape fire resilience (*Id*) (PRMP/FEIS, p. 223). Additionally, many of the forest management actions respond to climate change and consist of reducing stresses, increasing resistance and resilience to climate change (PRMP/FEIS, p. 199).

In conclusion, for all the reasons stated above, the BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to fire and fuels in the PRMP/FEIS.

NEPA – Effects Analysis – Hydrology

Issue Number: PP-OR-RMPforWOr-16-11-16

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The RMPEIS makes many invalid assumptions regarding the importance of nutrient dynamics, roads, climate change interactions with ongoing land and water management, and landslide impacts. The BLM admits that it has not fully evaluated these impacts.

Issue Number: PP-OR-RMPforWOr-16-11-16

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: BLM ignores the need for riparian reserves to provide or enhance watershed resilience and water quality in light of climate change and other stressors. Pacific Rivers, et al. comments to BLM RMPEIS, page 8: “The current ACS Riparian Reserves and accompanying buffers are especially important in light of the growing need for watershed resilience due to climate change and other stressors on water quality in the Region.”

The BLM's response indicates that it does not consider watershed resilience to climate impacts and other stressors to be part of its legal mandate. Nevertheless, it is required under NEPA to evaluate all potentially significant impacts to the human environment. How is it not a BLM

requirement to evaluate these potentially significant impacts under NEPA?

Issue Number: PP-OR-RMPforWOr-16-11-22

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM's response indicates that it does not consider the functions of riparian reserves in providing connectivity and corridors for fish and wildlife to be part of its legal mandate.

Issue Number: PP-OR-RMPforWOr-16-11-24

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM fails to account for the significantly high (average of 3.6 mi/sq mi, with some watersheds exceeding 5 miles/sq mi) current road densities in nearly all BLM watersheds due to the vast number of BLM's existing roads, as well as other roads BLM does not control via BMPs or management guidelines on the 50% non-federal lands within the checkerboard.

Issue Number: PP-OR-RMPforWOr-16-11-35

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM is using hydrological analysis that is biased and incomplete throughout the entire RMP. The BLM limits the hydrologic analysis to “peak flows.” The BLM must address the impacts of all alternatives on low flows not just peak flows.

Issue Number: PP-OR-RMPforWOr-16-12-65

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS and Reeves et al. (in press) fail to analyze how groundwater related stream refugia would be adversely affected by logging and road construction in former riparian reserves along critical habitat streams (the second tree width).

Issue Number: PP-OR-RMPforWOr-16-13-4

Organization: Klamath-Siskiyou Wildlands

Summary:

The BLM inadequately analyzed or did not analyze the effects of the alternatives on hydrologic resources, particularly from roads, water quality, riparian reserve, and climate change in the Western Oregon PRMP/FEIS.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action. *Id.*

Protester: Joseph Vaile

Issue Excerpt Text: The FEIS and Reeves et al. (in press) fails to analyze how groundwater related stream refugia would be adversely affected by logging and road construction in fonner Riparian Reserves along critical stream habitat (the second tree width).

Issue Number: PP-OR-RMPforWOr-16-13-5

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: Modeling in the FEIS incorrectly assumes that low gradient fish streams would remain centered within riparian reserves for the next 100-200 years. Several catastrophic floods are certain to occur over the next 100-200 years. The FEIS and Reeves et al. (in press) fail to analyze the adverse effects of large floods on 120 ft no cut buffers within I tree riparian reserves.

The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving any timber sale contract to start harvesting timber), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes hydrology of the planning area in Volume 1, pp. xxx, 43, 95, 369-411; pp. 1345-1387. The PRMP/FEIS describes the methods, tools, and assumptions used to evaluate the hydrologic resources for the planning area. Appendix J contains Best Management Practices (BMP). BMPs are a practice or combination of practices that have been determined to be the most effective and practicable in preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals (40 CFR 130.2 [m]).

The BLM used watershed analysis techniques to describe the affected environment as well as to address environmental consequences (PRMP/FEIS, pp. 369-411). The BLM chose a hydrological analysis that could compare the alternatives and potentially detect a change based on the analytical assumptions within the current hydrological understanding on how watershed systems work. Analyses described historic conditions and trends, and anticipated effects from the proposed actions. As appropriate, the BLM utilized data from existing watershed analyses.

As stated in the PRMP/FEIS Responses to comments, Appendix W, there is no substantive basis for the assertions that the BLM is using a hydrological analysis that is biased and incomplete. The BLM addressed peak flow in the PRMP/FEIS. Also as part of the earlier response to comments, the BLM added text to the PRMP/FEIS to explain why the BLM did not analyze in detail the effects of timber harvest on flow attributes other than peak flows (PRMP/FEIS, pp. 369-411, p. 1921).

Floods occurring over the next 100 to 200 years are considered a natural hazard with stochastic character and occurrence over a large temporal scale. Analyzing their contribution towards stream channel alterations over a short period of time relevant to this planning document would not provide an accurate comparison of the effects of alternatives. Therefore, low gradient streams remain centered within Riparian Reserves for analysis purposes. The PRMP/FEIS provides management direction design features that accommodate the 100 year flood in an effort to maintain/restore timing, magnitude, and duration of instream flows (PRMP/FEIS, p 1134).

The BLM analyzed the ways climate change may interact with BLM management actions in western Oregon, including water and aquatic resources, using the current scientific understanding. PRMP/FEIS, pp. 165-211. In this analysis, the BLM considered both how climate change would introduce uncertainty into outcomes and how the alternatives might allow the BLM to undertake actions to adapt to climate change during plan implementation (PRMP/FEIS, pp. 180-212). The protester does not address the analysis of climate change in the PRMP/FEIS or identify any errors or deficiencies in that analysis.

The PRMP/FEIS included an estimate of permanent road decommissioning and an estimate of new road construction both which were analyzed under the alternatives. All alternatives would construct little new road mileage compared to the existing road network and would make little contributions to existing sediment delivery to streams (PRMP/FEIS, pp. 297-299, pp. 401-408, pp. 778-791). Included in the aforementioned are revised analyses of potential sediment delivery from existing roads and new data for the estimate of new road construction for commercial thinning under each alternative and the PRMP (PRMP/FEIS, pp. 775-798). Under all alternatives and the preferred alternative, this would constitute less than a 1 percent increase above current levels of fine sediment delivery from existing roads. Although the absolute values for increased potential fine sediment delivery through 2023 vary, these differences do not represent a substantial difference in effects, because the increases in sediment delivery and the differences among the alternatives and the preferred alternative in future increases in sediment delivery are inconsequential in comparison to the existing sediment delivery. The alternatives in the PRMP/FEIS all include limitations on road construction through management directed BMPs. Application of BMPs in specific implementation actions would limit or avoid delivery of sediment to water bodies (PRMP/FEIS, Appendix J, pp. 1345-1388). Therefore, water quality for instream beneficial uses would be protected, thus complying with the Clean Water Act (PRMP/FEIS, p. 1345).

The effect of timber harvest on nutrient loading in streams was not analyzed in detail because none of the alternatives or the PRMP would have a significant effect on nutrient loading in streams. Under all alternatives and the preferred alternative, allocation and management of Riparian Reserves would reduce or avoid nutrient loading of streams from upslope forest practices (PRMP/FEIS, pp. 409-410).

For all the reasons mentioned above the BLM has complied with NEPA's requirement to analyze the environmental consequences/impacts on hydrologic resources in the PRMP/FEIS.

NEPA – Effects Analysis – Recreation

Issue Number: PP-OR-RMPforWOr-16-46-5

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: Volume 2, Chapter 3, Recreation and Visitor Services, page 557 - “The BLM used the total amount of roads - including new road construction to occur ...

over the next ten years to classify recreation opportunity classes...” This statement is in direct conflict with the statement in Volume 4, Appendix Q, page 1589, “BLM is deferring implementation level travel management planning ...” Without the completion of a travel management plan, any use of existing roads and projected new roads is specious and arbitrary for any classification purposes.

Summary:

Without the completion of a travel management plan, any use of existing roads and projected new roads is specious and arbitrary for any classification purposes.

Response:

BLM Handbook 8320-1 Planning for Recreation and Visitor Services (R&VS) (USDI BLM 2011 Section F.1.a) requires that Land Use Planning (LUP) decisions include the designations of Recreation Management Areas (RMAs) on all BLM managed lands. With those designations, the BLM is required to establish R&VS services objectives, and identify LUP-level supporting management actions and allowable uses for each RMA.

The BLM is also required to designate all public lands as either open, limited, or closed to off-road vehicles as defined in 43 CFR §8340.0-5, (f), (g) and (h) respectively. The BLM Travel and Transportation Management Manual-1626 (USDI BLM 2011) outlines the BLM’s policies for travel and transportation management planning in the land use planning process consistent with 43 CFR 8342. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands. Consistent with current BLM policy (BLM Travel and Transportation Management Manual-1626 (USDI BLM 2011), the BLM is deferring implementation-level travel management planning during the current planning effort. The protester incorrectly asserts that without the completion of a travel management plan, any use of existing roads and projected new roads is **specious** and arbitrary for any classification purposes.

The BLM has complied fully with the policy established in BLM Manual 8320-Planning for Recreation and Visitor Services (USDI BLM 2011 Section F.1.a) which provides direction and guidance for the process of the designation for RMAs. The BLM identified the recreation opportunity spectrum class for remoteness by using its functional road classification system to assign road types by recreation opportunity spectrum class and identifying distance criteria (topography, vegetation, and road type) (PRMP Volume 2, page 556). The functional classification of a road indicates the character of service a road provides and the appropriate road maintenance intensity levels from basic custodial care to annual scheduled and preventative

maintenance programs. Functional classification of arterial, collector, local, and resource roads was completed and was in use by the BLM's engineering program prior to this planning process. The desired recreation setting characteristics for a particular area are categorized through BLM's Recreation Setting Classification System which is based on a combination of physical, social, and operational components. Physical components include characteristics of remoteness, naturalness, and visitor facilities. Social components include characteristics of contacts, group size, and evidence of use. Operational components include characteristics of access, visitor services, and management controls. 'Remoteness' is defined by an area's proximity to human modifications associated with roads or trails. The distance criteria used account for the project area's topography, vegetation, and road type. Road types consist of arterial, collector, local, and resource roads (USDI BLM 1996b, updated 2002).

The effects on all of the recreation setting characteristics were discussed in the analysis of RMAs, recreation opportunities, and recreation demand. The BLM has focused the discussion of effects remoteness and naturalness on how the PRMP/FEIS would change the existing recreation opportunity spectrum for these characteristics. The desired recreation opportunities, recreational settings, relevant and important values, and special management needs were part of the analytical methodology used to identify the appropriate public motorized access designations (OHV area designations) required under 43 CFR 8342.

Route specific decisions in a TMP are to support the RMP goals, objectives, and management actions, and the designation criteria in 43 CFR 8342.1. The designation of the individual roads, primitive roads, and trails will be addressed in the future as implementation-level site specific plans, and will comply with NEPA and other applicable laws and regulations and be carried out consistent with applicable BLM policies.

The BLM manages recreation resources and visitor services primarily through designation of RMAs and their associated managed recreation activities, opportunities, and recreation setting characteristics. The BLM policy direction on designation of RMAs was revised in 2014 (USDI BLM 2014), and included changes to the designation process of RMAs. Table 3-121 shows the criteria for defining the recreation opportunity spectrum class for remoteness (Route specific decisions, Page 557 Volume 2). The BLM used the total amount of roads, including new road construction projected to occur under the alternatives and the PRMP over the next 10 years, to classify recreation opportunity spectrum classes for remoteness.

The methodology used by the BLM to designate RMAs for lands within the project area is consistent with agency policy. The BLM correctly used the functional classification of existing roads to establish remoteness and naturalness as part of the BLM's Recreation Setting Classification System. The desired recreation opportunities, recreational settings, relevant and important values, and special management needs were part of the analytical methodology used to identify the appropriate public motorized access area designations required under 43 CFR 8342. BLM correctly use established functional road classifications for the purpose of developing recreation setting characteristics as part of the recreation management area designation process.

NEPA – Effects Analysis – Socioeconomics – Timber Prices

Issue Number: PP-OR-RMPforWOr-16-10-15

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The question remains as to whether or not the actual revenues received reflect reasonable prices, and if not, what system the BLM plans to put in place to ensure that minimum bid prices received are, in fact, reasonable.

Issue Number: PP-OR-RMPforWOr-16-10-4

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The BLM has not discussed the process the agency intends to use to ensure that when offered for sale, its timber receives reasonable prices.

Issue Number: PP-OR-RMPforWOr-16-12-133

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Summary:

The BLM failed to take a “hard look” at market failures for timber in the Western Oregon PRMP/FEIS. The BLM has not discussed the process the agency intends to use to ensure that when offered for sale, its timber receives reasonable prices. The assumptions used in its models set the price for timber at or below market value. The BLM should remedy these issues in the planning cycle by adjusting its analyses to include a fair price setting method.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR

Issue Excerpt Text: The Response to Comment goes on say “[C]ompetitive markets, which represents the highest standard for establishing prices, market failures in the western Oregon timber markets do not constitute a substantial issue that would alter the analysis of effects of the alternatives on timber supply and demand as analyzed in the Draft RMP/EIS” (PRMP/FEIS at 1952). This conclusion is irrational and contrary to an extensive body of well-recognized economic analyses and information that BLM does not address. BLM failed to take a hard look at this issue as required by NEPA. Public comments established that these market imperfections are very significant.

Issue Number: PP-OR-RMPforWOr-16-10-7

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: There are no provisions for or even discussion of how the BLM intends to go about offsetting both the federal financial costs and negative externalities of its timber sale program.

1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The BLM used recent as well as historical market trends and levels of activity by timber suppliers in the PRMP/ FEIS. The BLM presented the historical stumpage prices in western Oregon for BLM, U.S. Forest Service, and state and private timber sales (USDI BLM 2016, p. 601-606). For BLM timber sales, stumpage is appraised and sold (by auction) in competitive markets at the fair market value. For projecting stumpage prices into the future, the BLM generalized trends from the volatile nature of the market, as explained the PRMP/FEIS (USDI BLM 2016, pp. 636-642).

As explained in Appendix W, Response to Comments to DRMP/EIS: *“Timber markets, like other commodity markets, are organic frameworks that operate with little structure other than to establish terms of trade. They seek to cover production costs of suppliers and to reduce factor costs of production. In the case of both public and private forest management, production costs include stand establishment costs, management costs, administrative costs, and harvesting costs. Externalities are often mitigated through regulation of forestry practices, such as stream buffers or limits on harvesting practices. There is little evidence of subsidies in western Oregon timber markets, though Federal agencies may sell some timber at less than the production costs, typically as part of restoration strategies to reduce fire risks or to restore habitat. In such cases, the timber harvest represents a by-product of other achieving other management purposes”* (pp. 1951-1952).

The BLM sells timber by auction in competitive markets, which represents the highest standard for establishing prices. Because of this, market failures in Western Oregon timber markets do not constitute a substantial issue that would alter the analysis of effects of the alternatives on timber supply and demand as analyzed in the PRMP/FEIS. The BLM does not agree that offsets, assessments of negative externalities, or other intervening approaches, are necessary to analyze the effects of the alternatives on timber supply and demand.

NEPA – Effects Analysis – Socioeconomics – Payments to Counties

Issue Number: PP-OR-RMPforWOr-16-08-5

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: While the DRMP/EIS economic analysis purports to address the local economic impacts, it does so by reference to county payments, rather than a

more appropriate discussion of how these payments are utilized by the counties to provide essential services (e.g. sheriff patrol, jail capacity, emergency communications and response, criminal prosecution capacity, juvenile services, transportation infrastructure, water resources enhancement, economic development and job creation efforts, libraries, museum, recreation and other cultural enhancement efforts).

Summary:

The BLM violated NEPA by failing to fully consider and adequately analyze the economic impacts of its timber sales on counties in the Western Oregon PRMP/FEIS. It also does not provide adequate details on the application of the revenue generated from timber sales to the counties, nor does it disclose the process by which the agency determines what constitutes “reasonable” and “fair” prices from timber.

Response:

Under NEPA, the BLM is required to take a “hard look” at potential economic impacts of adopting the Western Oregon Proposed RMP/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The agency need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The BLM examined in detail the potential economic impacts of adopting the PRMP/FEIS, including to counties. Included in those analyses is discussion of the impacts of different timber revenues on county services and community capacity. In Issue 3 of the Socioeconomics section, the analysis focuses on the effects of the alternatives on amount of payments to counties from activities on BLM-administered lands. Issue 5 of the Socioeconomics section incorporates output from Issue 3 into its analysis of the impacts of the alternatives on community capacity (USDI BLM 2016, pp. 703-723).

The PRMP/FEIS provided a historical context for the analysis of how alternatives may affect county payments and may affect spending on services. This information includes the relative importance of county payments to total county budgets, the types of county services supported by county payments, and the challenges counties have faced and currently face with declining county payments from 2003 through 2012 (USDI BLM 2016, pp. 691-692). The Analysis of the Management Situation provided additional information, including county payments as a percentage of county budgets and as a percentage of county general funds discretionary revenue (USDI BLM 2013, pp. 96-10). This information also included a description of the Oregon Secretary of State’s assessment of financial well-being, which found that all eight of the counties

identified as having a higher rate of financial distress receive payments from activities on BLM-administered lands (USDI BLM 2016, p. 590).

Counties choose how to spend these payments. Counties also decide whether and how to change spending on county services in response to changes in payments from activities on BLM-administered lands. It is outside the purpose or scope of the analysis to speculate how counties might choose to change future spending on county services in response to future changes in payments from activities on BLM-administered lands.

The BLM took the requisite “hard look” at the economic effects of the alternatives in the PRMP/FEIS, including payments to counties.

NEPA – Effects Analysis – Socioeconomics – Social Cost of Carbon & Failure to Reply to Comments

Issue Number: PP-OR-RMPforWOr-16-12-49

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to consider more accurate estimates of the social cost of carbon dioxide emissions. The Response to Comment said, “The value reflects the latest Federal estimates of the social cost of carbon, using the guidance and methods outlined by the Council on Environmental Quality.” The Response to

Comment said “BLM believes using the current (2015) social cost of carbon estimates in the Proposed RMP/Final EIS is justified, because more comprehensive, peer-reviewed estimates are not available.” NEPA does not allow BLM to limit its analysis that way. BLM failed to respond to detailed comments about various criticisms of the official cost estimates. Several important costs are left out of the official estimates, so higher values make more sense. BLM failed to fulfill its duty to disclose and consider opposing viewpoints.

Summary:

The BLM failed to disclose and address “opposing viewpoints” on social cost of carbon estimates. “Opposing viewpoints” may be understood in two ways, both of which we respond to below:

- Failure to adequately respond to concerns in BLM’s response to comments in the DRMP/PEIS, including those submitted by other individuals. Those comments continue to be relevant and apply to the PRMP/FEIS, and thus should be considered by the BLM during this protest period; and
- Failure to take into consideration best available information. Higher social cost of carbon estimates would have been more appropriate for the PRMP/FEIS because there is disagreement among people about the methodology the BLM relied upon to arrive at its estimates in the DRMP/PEIS and PRMP/FEIS.

Response:

The BLM has various socioeconomic-related policies, including the following:

- The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).
- The BLM NEPA Handbook also provides policy guidance that directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55).
- Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

- Agencies are required, to the extent permitted by law, “to assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs” (E.O. 12866).
- NEPA Response to Comments: The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24).
- The BLM may rely on the reasonable opinions of its own experts. *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 378 (1989).

The BLM’s social cost of carbon estimates rely on the U.S. Interagency Working Group (IWG) on Social Cost of Carbon’s latest estimates and methodology, from July of 2015 (IWG 2015). The IWG’s estimates are the best available estimates of the social cost of carbon at the current time. The BLM has updated the social cost of carbon estimates presented in Issue 1 of the Socioeconomics section of the Proposed RMP/Final EIS in response to new information accepted by the IWG.

The IWG identifies limitations to the analysis in the 2010, 2013, and 2015 technical support documents. The BLM also disclosed the limitations of the IWG methodology in the PRMP/FEIS, both the Socioeconomics chapter (Vol. 2, pp. 598-599) and in the Response to Comments-Appendix W (Vol. 4, pp. 1948-1949, Comment 259). These identified limitations include some of the same concerns raised through public comments on the Draft RMP/EIS and by the commenter above.

In compliance with NEPA, the BLM considered all public comments submitted on the PRMP/FEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix W of the PRMP/FEIS presents the BLM’s responses to all substantive comments.

The PRMP/FEIS includes a bibliography with sources relevant to the social cost of carbon in the Socioeconomics section (PRMP/FEIS, pp. 739-745). This bibliography lists pertinent information considered by the BLM in preparation of the PRMP/FEIS.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response. It is important for the public to understand that BLM’s comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the PRMP/FEIS.

The BLM relied on high quality information and the best available data in preparation of the PRMP/FEIS. The BLM also adequately responded to public comments on the DRMP/DEIS. The BLM has met its burden under NEPA to include high quality information and best available data under the Information Quality Act.

NEPA – Effects Analysis – Socioeconomics – Non-Market Values

Issue Number: PP-OR-RMPforWOr-16-12-130

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM discounts the value and significance of non-market values in its economic analysis by saying “Non-market values reflect the importance people place on goods and services for which they do not have to pay real money...” (RTC 252, FEIS/PRMP at 1946). This bias for “real money” discounts valid and well-recognized economic information and analyses without a rational explanation. It also reinforces the timber industry’s mantra that non-market values are in some way less real and less valid than material that is monetized. BLM cannot so lightly or rationally dismiss non-market values that are real and significant.

Issue Number: PP-OR-RMPforWOr-16-12-134

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Summary:

The BLM failed to take a hard look at non-market economic values in the Western Oregon PRMP/FEIS. While the BLM quantifies the use values, which are typically revealed by market transactions, it fails to adequately monetize non-use values. The BLM directly reveals its bias toward monetary valuation techniques in the Response to Comments 252, Appendix W (USDI BLM 2016, FEIS/PRMP, p. 1946). The BLM is dismissive of non-market values.

Response:

The BLM has various socioeconomic-related policies, including the following:

- USDI BLM 2005 - Land Use Planning Handbook, BLM Handbook H-1601-1, Appendix D: Topics for socio-economic analysis on economic values, including market and nonmarket values.

Issue Excerpt Text: The BLM also failed to quantify non-market economic values making it difficult or impossible for the public and the decision-maker to make apple-to-apples comparisons of the effects of different approaches to logging and conservation.

Issue Number: PP-OR-RMPforWOr-16-12-131

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s treatment of this and other relevant economic issues is irrational and arbitrary. BLM’s failure to rationally address these issues is described in greater detail in the attached “Points for Supplement to Protest of the BLM’s Proposed Resource Management Plan/Final Environmental Impact Statement: Western Oregon,” prepared by Ernie Niemi of Natural Resource Economics, Inc. These additional protest points were addressed in comments on the DEIS and are incorporated into this protest by this reference as though fully set forth herein.

- USDI 2013a : Official BLM guidance on estimating non-market values, including “willingness to pay”, a calculation derived using a scientifically validated and professionally accepted methodology.
- CEQ 2013: Principles and requirements for Federal investments in water resources. This document provides federal guidelines for conducting economic analyses. The PRMP/FEIS economic analyses are consistent with the methodology outlined in this document.
- U.S. EPA 2010: Guidelines for preparing economic analyses. This document provides federal guidelines for a method known as “benefit transfer” to value non-market goods and services when data or resources are limited.

The BLM considers market and non-market values in the PRMP/FEIS, including a detailed explanation of the importance of non-market values, and of the techniques used to quantify or qualify each type of value. All goods and services to which the BLM performed valuation techniques (market and non-market) are presented in Table 3-142 (p. 591). The text of the Socioeconomics section details the techniques used to analyze a range of values including, “timber”, “minerals”, “cultural meaning”, and “scenic amenities”. The BLM does not display preference or bias in its analyses or in its discussion of values.

It is important to point out to the reader that market and non-market values are comparable insofar as they both reflect changes in society’s overall economic well-being. However, they are not comparable in how they contribute to the fiscal status of the economy. Market and non-market valuation techniques are not necessarily mutually exclusive and, in many cases, are complementary. That is, the lands can supply multiple goods and services at the same time. For example, recreational uses and timber harvest are not mutually exclusive; many types of recreation take place on lands managed also for timber harvest.

The PRMP/FEIS contains a reasoned analysis containing quantitative or detailed qualitative information on how the alternatives would affect market and non-market values. Thus, the PRMP/FEIS took a ‘hard look’ at the effects on market and non-market values.

NEPA – Effects Analysis – Socioeconomics – Communities, Timber Volatility, Quality of Life

Issue Number: PP-OR-RMPforWOr-16-12-135

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM under-estimated the full extent of the adverse effects of timber industry volatility on communities in western Oregon. BLM used nation-wide data to analyze industry volatility, but the Response to Comment says “national patterns are likely to represent a lower bound of growth-rate volatility for timber sectors in western Oregon” (RTC 278, FEIS/PRMP at 1957). Public comments raised the concern that the adverse effects of timber industry volatility are most pronounced and most negative as experienced by small communities that are disproportionately [sic] dependent on timber industry. BLM did not address this evidence or acknowledge that the available evidence indicates it could do more to stabilize these communities by focusing on providing high quality of life that helps attract diverse industries that do not tend to so regularly boom and bust.

Issue Number: PP-OR-RMPforWOr-16-12-137

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM justifies its erroneous conclusions based on the outdated views of local leaders that do not reflect the best available evidence.

Issue Number: PP-OR-RMPforWOr-16-12-140

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS perpetuates a false dichotomy: timber jobs vs recreation jobs. The FEIS fails to reflect the fact that “recreation” is far too narrow a view of the economic alternative to logging, because forest conservation provides economic benefits across virtually every sector of the economy.

Issue Number: PP-OR-RMPforWOr-16-12-143

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The view that more logging on federal land is good for communities is based on an outdated view that is not supported by the available and relevant economic and socioeconomic information.

Issue Number: PP-OR-RMPforWOr-16-12-163

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The PRMP/FEIS projects that salvage logging would occur at the rate of 359 acres per year. This is misleading because fires do not occur in a steady rate over time. They are highly episodic, with some years producing few wildfires and other years producing many thousands of acres of wildfires. Salvage logging would likely follow this episodic, boom-bust pattern. The FEIS did not analyze or disclose this disruptive effect on community stability.

Summary:

The Western Oregon PRMP/FEIS does not adequately acknowledge or consider the historical, patterned, boom and bust cycles associated with the timber industry in the region. This historical pattern disproportionately impacts local communities that are dependent upon timber. The BLM should have acknowledged the important role it plays in managing public land to promote high quality of life through forest conservation and the economic activities that stem from conservation such as recreation. An emphasis on forest conservation by the BLM would attract a more diverse industrial base to the region that would stabilize communities.

Response:

The BLM has various socioeconomic-related policies, including the following:

- NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the PRMP/FEIS.
- The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.
- The PRMP/FEIS contains a “reasonably thorough” discussion of economic and social consequences of its proposed actions. The agency can make an informed decision about whether there are any significant environmental impacts. *Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)); *Biodi*
- In addition, the O&C Act requires that the Oregon and California Railroad Revested Lands and reconveyed Coos Bay Wagon Road Grant lands (O&C lands) be managed as stated here: “Timber thereon shall be sold, cut, and removed... for the purpose of providing a permanent source of timber supply...and contributing to the economic stability of local communities and industries, and providing recreational facilities” (43 USC 1181a).

During the public comment period on the Draft RMP/EIS, the BLM was urged by the public to analyze the relationship between BLM’s management, including for timber, and specific social conditions that tend to be associated with “quality of life” in the scientific literature (e.g., health, employment, education). Although the BLM reviewed data on these conditions provided by the public and explored the potential to do such an analysis (p. 1958), it was unable to do so because of the myriad factors that influence social conditions and the practical inability to isolate timber harvest volume as a factor affecting such social conditions. Instead, the BLM opted to explore the relationship qualitatively through interviews with community and Tribal leaders. For detailed information on these interviews, see Issue 5 of the Socioeconomics section (p. 703-723) and Appendix P – Socioeconomics.

Protests suggest that the BLM focuses too heavily in the PRMP/FEIS on management for logging, which is bad for communities, rather than on forest conservation, which is good for communities. “An emphasis on forest conservation by the BLM would attract a more diverse industrial base to the region that would stabilize communities.” The BLM can only analyze known or reasonably foreseeable circumstances in its projections, which it acknowledges in the PRMP/FEIS: “For economic effect purposes, it is impossible to account for and project the effect of all such decisions separately. However, standard projections of population and employment that carry forward the economic momentum observed in current conditions and trends are a measure of how the economy is likely to develop, given known or reasonably foreseeable development” (p. 684; emphasis added).

The BLM complied with NEPA’s requirement to analyze the economic and social impacts to communities in the PRMP/FEIS.

NEPA – Effects Analysis – Socioeconomics – Environmental Justice

Issue Number: PP-OR-RMPforWOr-16-12-51

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s analysis of environmental justice refused to recognize that its decision to forego opportunities to store more carbon represents an increase in the adverse effects of climate change and that these effects will fall disproportionately [sic] on the poor and disadvantaged and will extend far beyond the counties in the planning area.

Issue Number: PP-OR-RMPforWOr-16-12-52

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Even if the BLM limits the scope of its analysis of environmental justice and human health,

many of the adverse effects experienced globally, will also happen locally, and BLM has not fully disclosed those effects. BLM failed to take a hard look at the fact that the adverse effects of climate change will fall disproportionately on the poor and disadvantaged.

Issue Number: PP-OR-RMPforWOr-16-12-50

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 285, FEIS/PRMP at 1961, BLM refused to consider the environmental justice implications of BLM’s contribution to excessive CO2 emissions and global climate change. BLM failed to respond to detailed public comments explaining how logging will contribute to the adverse effects of global warming, including adverse effects on human health and disproportionate effect on poor and disadvantaged people.

Summary:

Environmental justice populations are minority or low-income communities that could experience disproportionately high and adverse human health or environmental effects from the implementation of the PRMP. The Western Oregon PRMP/FEIS failed to take a “hard look” at the full extent of the climate impacts that will result from its actions. These impacts will fall disproportionately on environmental justice populations inside and outside of the analysis area.

Response:

The BLM has various socioeconomic-related policies, including the following:

- BLM NEPA Handbook (USDI BLM 2008, pp. 58-59) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations (1994). Requires analyses of Federal actions to address human health and environmental conditions in minority and low-income communities, and to ensure that disproportionately high and adverse human health or environmental effects on these communities are identified and addressed; and
- Council on Environmental Quality, Environmental Justice and NEPA (CEQ NEPA 1997)

The BLM NEPA Handbook explains that the geographic scope of the effects analysis does not extend beyond the scope of the direct and indirect effects of the action (USDI BLM 2008, pp. 58–59). The BLM appropriately limited the geographic scope of the environmental justice analysis to the counties within the planning area, because these areas reflect the scope of the direct and indirect social and economic effects of the alternatives.

In the Socioeconomics section under Issue 6, the BLM discusses and fully discloses potential impacts to environmental justice populations (pp. 724-734) and finds that “employment effects to low-income populations in Coos and Curry Counties would be disproportionately negative under Alternatives A, B, and D, and the Proposed RMP. Under Alternative D, employment effects in Douglas and Klamath Counties would also be disproportionately negative. Low-income communities and Tribes in these counties would be vulnerable to these disproportionately-negative effects” (USDI BLM 2016, p. 723).

However, climate change, in and of itself, is not an effect of a BLM action. The PRMP/FEIS nonetheless analyzed the effects of the alternatives on carbon storage and greenhouse gas (GHG) emissions, and calculated the social cost of carbon under different BLM management scenarios more broadly (not just on environmental justice populations). The BLM updated the social cost of carbon estimates presented in Issue 1 of the Socioeconomics section of the PRMP/FEIS in response to new information. Using the results of the effects analysis presented in Issue 1 of the Climate Change section, the economic analysis calculated the marginal change in stored carbon between 2013 and 2023 and between 2013 and 2063 by alternative and the PRMP (pp. 620-621). As detailed in that analysis, all alternatives would result in a net increase in carbon storage over time (p. 653).

The BLM examined all disproportionate effects on minority and low-income populations in the planning area. While the BLM also examined climate effects of the alternatives on carbon storage and GHG emissions generally, the effects of climate change on minority and low-income populations outside of the planning area are beyond the scope of this analysis.

NEPA – Effects Analysis – Trails & Travel Management

Issue Number: PP-OR-RMPforWOr-16-29-18

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: BLM Failed to Follow Regulations Regarding OHV Designations. The PRMP has identified most of the acreage in Southern Oregon and throughout the state as “limited to existing trails” in regards to OHV use. In identifying Recreational Management Areas and specific trail designations, the BLM failed to follow its own regulations, which require that all OHV designations “be based on the protection of the resources of the public lands, the promotion of the safety of all the

users of the public lands, and the minimization of conflicts among various uses...”

Issue Number: PP-OR-RMPforWOr-16-12-174

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director’s decision to open 668,601 acres for motorized use on the Medford District by changing the designation from Limited to Designated Routes and from Limited to Existing Routes, FEIS/PRMP at 1598, is arbitrary and contrary to law.

Summary:

The Western Oregon PRMP/FEIS failed to follow federal regulation when it designating RMAs, OHV Areas, and trails because the designations were not based on the protection of resources or to minimize conflicts among various uses.

Response:

BLM Handbook 8320-1 Planning for Recreation and Visitor Services (USDI BLM 2011 Section F.1.a) requires that LUP decisions include the designations of RMAs. BLM is also required to establish R&VS services objectives, and identify LUP-level supporting management actions and allowable uses for each RMA. All public lands must be designated as either open, limited, or closed areas to off-road vehicles as defined in 43 CFR §8340.0-5, (f), (g) and (h) respectively. Consistent with current BLM policy (BLM Travel and Transportation Management Manual-1626 (USDI BLM 2011), the BLM is deferring implementation-level travel management planning to a future effort.

The BLM manages, allows, and restricts specific recreation activities within RMAs in order to create and sustain high-quality recreation opportunities, achieve desired recreation conditions including recreation setting characteristics, and protect public health and safety from potential conflicts between recreationists (PRMP/FEIS Volume 1, Pg. 556). RMA designations made in the PRMP were based on recreation demand and issues, recreation setting characteristics, resolving use/user conflicts, compatibility with other resource uses, and resource protection needs. (see PRMP/FIES Volume 4, Appendix O, Table 0-1 for a full list of RMAs.)

The BLM's designation of all public lands within the planning area as either open, limited, or closed to off-road vehicles is consistent with federal regulation 43 CFR §8340.0-5. Implementation-level travel management planning is the process of establishing a final travel and transportation network that includes route-specific designations within the broader land use planning level area designations. Land use planning-level designations are applied to all acres of BLM-administered lands within the planning area which designate areas as open, limited, or closed to public motorized access, as defined in the BLM Travel and Transportation Manual 1626 (USDI BLM 2011). Although the land use planning-level designations of open, limited, or closed address only public motorized access, subsequent implementation-level travel management planning would address all modes of public travel, including non-motorized travel.

The PRMP/FEIS is a high level and broad-scoped planning document which does not make site-specific implementation level decisions such as route-specific designations. The BLM will make final route designations within the decision area in comprehensive, interdisciplinary Travel and Transportation Management Plans (TMPs), which are scheduled to be completed within five years after the completion of the western Oregon RMPs (PRMP/FEIS, Vol. 4, App. Q, pg. 1589). Until implementation-level TMPs are complete, routes and trails would be managed in accordance with their area designation of closed or limited to existing routes for public motorized travel activities, as described for each district. In the designations for public motorized access, the BLM would consider the needs for a variety of road and trail systems tailored to a variety of users including non-motorized recreational uses.

For all areas, the BLM considered the potential for increases or decreases in conflict between recreationists from recreation management actions, opportunities, and restrictions. Recreational conflict occurs when incompatible activities take place in the same area, or when certain types of recreational use could result in unwanted impacts to other resources. Certain activities interfere with the experience expectations of other recreational users (Marcouiller et al. 2008). For example, a hiker with the expectation of a quiet experience that encounters an OHV on a trail might consider the encounter as a conflict. The presence of an OHV interferes with the expectation of a quiet outing. Conflict among recreational users is generally asymmetrical; that is, one user might perceive there is a conflict while another user might not perceive there is a conflict (Jackson and Wong 1982).

The BLM manages these potential conflicts by applying restrictions on certain recreation activities. In some cases, this results in seasonal restrictions, but can also result in prohibition of the recreational activity within the SRMA or ERMA if necessary. Restrictions of certain activities would preclude the opportunities for those activities on BLM-administered lands. RMA frameworks have been developed for each proposed RMA are broken out by Districts. These frameworks identify the key elements of the recreation areas to provide a clear understanding of the targeted recreation activities, experiences, benefits, outcomes, allowable use activities and management actions associated with each area. A description of each RMA using the RMA Frameworks is available at <http://www.blm.gov/or/plans/rmpswesternoregon/feis.php> (Appendix O, pg. 1503).

In conclusion, the OHV area allocations and RMA designations completed in the PRMP/EIS were done in compliance to federal regulation and policy. Site-specific implementation level

decisions such as trail designations were not done as part of this planning effort however, trail designations will be completed in subsequent TMPs (in accordance 43 CFR §8342 and BLM Handbook 8320-1) for lands within the decision area.

NEPA – Effects Analysis – Vegetation Modeling

Issue Number: PP-OR-RMPforWOr-16-12-180

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In addition to Medford District documented overcutting of NSO habitat, Medford District also documented

that thinned units are experiencing unanticipated blowdown which contributed to NSO habitat downgrading and removal. This is also important because BLM did not model wind throw in vegetation modeling (FEIS/PRMP at 314 & n. 56). BLM also must correct this omission before making a final RMP decision.

Summary:

The BLM inadequately analyzed impacts of the alternatives and the preferred alternative in the Western Oregon PRMP/FEIS because post-thinning wind throw was not incorporated into the vegetation model.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)).

The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*).

The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982))). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision-maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Preliminary to the DEIS/RMP, BLM produced the Resource Management Plans for Western Oregon BLM Planning Criteria document (USDI BLM 2013, pp. 27–204). The planning criteria laid the groundwork for the formulation of alternatives for consideration in the planning process and guide the analysis of effects. Planning criteria help guarantee that the RMP process is consistent with applicable law, regulation, and policy. The criteria ensure that the planning effort is tailored to the issues previously identified and the BLM avoids unnecessary data collection and analysis (43 CFR 1610 4-2(a)). The planning criteria document was made available for public review and comment prior to use (43 CFR 1610 4-2(c)).

The BLM used the Woodstock model as part of the Remsoft Spatial Planning System 2012.12.0 to simulate the management and development of the forested BLM-administered lands over time. PRMP/FEIS, p. 124. When selecting a model, the BLM took into consideration the need to do a strategic plan, rather than a tactical plan. This means that the BLM is primarily interested in understanding the consequences of the alternatives across broad landscapes, rather than making decisions about actions at specific locations (Planning Criteria, p. 28). As stated in the planning criteria, the BLM is responsible for defining the elements and all of the assumptions utilized in formulating the model for each alternative (*Id.*).

In the Woodstock vegetation modeling, the BLM accounted for reductions to timber growth and yield due to endemic levels of insects and diseases, but the BLM did not model large-scale episodic insect or disease outbreaks or windthrow that would affect stand structural stage classifications or age class distributions. PRMP/FEIS, p. 314. This type of tree mortality is often irregular or episodic in nature, and is inherently difficult to predict the exact time in which it will occur (Franklin et al. 1987). PRMP/FEIS, Appendix C, p. 1203. Appendix C provides an overview on the development of the vegetation model and the key components. PRMP/FEIS, Appendix C, pp. 1163-1227.

For reasons stated above, the BLM complied with NEPA's requirement to analyze the environmental consequences/impacts of the alternatives and the preferred alternative on vegetation resources in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants

Issue Number: PP-OR-RMPforWOr-16-12-117

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM claims that the availability of early seral habitat is the primary limiting factor in deer and elk population numbers. However, the BLM is planning extensive salvage logging under the PRMP which would degrade naturally created early-seral habitat for these ungulate species. The BLM has not weighed the trade-offs between not salvage logging and not artificially creating early-seral habitat and the potential impacts these tradeoffs could have in the various contemplated alternatives for these species. This analysis would be very useful to inform the hunting community on the impacts of the PRMP to these species. The failure of the BLM to take a hard look at this issues and the trade-offs involved is a violation of NEPA.

Issue Number: PP-OR-RMPforWOr-16-12-183

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on wildlife, particularly regarding the reduced availability of early seral habitat for deer and elk from salvage logging and incorporating new information about pileated woodpeckers.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the

Issue Excerpt Text: The FEIS/PRMP analysis failed to consider significant new information on pileated woodpeckers including:

- a. Pileated woodpeckers need more and larger roosting trees than nesting trees. They may use only one nesting tree in a year, they may use 7 or more roosting trees.
- b. West of the Cascades, pileated woodpeckers tend to prefer nesting in decadent trees rather than snags.
- c. West of the Cascades, standing snags are important foraging sites because down wood may be too wet to harbor carpenter ants (the favored foods of the pileated woodpecker).
- d. West of the Cascades, Pacific silver fir is often used for nesting (but not roosting).
- e. West of the Cascades, western red cedar is often used for roosting (but not nesting).

Determining the pileated woodpecker’s population potential based on nesting sites alone will not provide adequate habitat to sustain this species and places it at unnecessary risk. This new information is not recognized in current management requirements at the plan or project level.

PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM analyzed and disclosed potential effects to wildlife, including deer, elk, and landbirds (PRMP/FEIS pp. 825-869). Further analyses and tables are provided in Appendix S. PRMP/FEIS, pp. 1691 (Table S-37), 1700 (Tables S-42 and S-43).

The PRMP/FEIS analysis of deer and elk states that BLM-administered lands contribute 5 percent of the available high-quality forage habitat available in the planning area (p. 864). The BLM disagrees with the protester’s characterization that “extensive” salvage logging is planned. Site-specific salvage actions would be subject to additional NEPA analysis and public comment. Overall, salvage logging is restricted in late successional reserves and riparian reserves, in these areas only a small percentage of the habitat would potentially be salvage logged (PRMP/FEIS, p. 1105, 1116, 1117, 1123, 1105). As noted under Analytical Methods, even were potentially-burned forage habitat and intentionally-created early seral habitat to be compared as the protester suggests, it is not possible in this analysis to equate changes in forage habitat to changes in populations (i.e. impacts to the species), because there are other factors that influence deer and elk populations outside the scope of BLM land management decisions, such as regulated harvest levels of deer and elk authorized by Oregon Department of Fish and Wildlife and mortality from predators or vehicle collisions. PRMP/FEIS, p. 866. As such, additional analysis as suggested by the protesters was considered by the BLM and would not lead to a reasoned choice between the alternatives and is not necessary.

The pileated woodpecker is one of 34 landbirds considered in the PRMP/FEIS analysis as a 'focal species.' PRMP/FEIS, p. 832. As described in the Summary of Analytical Methods, the BLM analyzed the suite of focal landbird species by grouping species with habitat needs that are roughly the same and evaluating the amount of habitat in which these species are found. PRMP/FEIS, pp. 833-836. The specific pileated woodpecker information the protestor cites was incorporated into the analysis at the plan level by using forest structural stages and an analysis of snags and down woody material. *Id.*

For all the reasons stated above, the BLM complied with NEPA's requirement to analyze the environmental impacts to deer, elk, and pileated woodpecker in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Special Status Species

Issue Number: PP-OR-RMPforWOr-16-12-112

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM fails to analyze impacts to wolf dispersal in the PRMP. Gray wolf populations are still very new to Oregon and the project area, and there are crucial areas -- choke points -- that provide wolf dispersal corridors around population centers and major roadways. Human presence and industrial activity associated with logging can influence or prevent successful dispersal, and the BLM here has failed to consider these potential impacts to dispersal, identify critical dispersal corridors, or identify potential seasonal restrictions in these areas to facilitate wolf recovery in the state.

Issue Number: PP-OR-RMPforWOr-16-12-80

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS is wrong to limit management standards in riparian reserves to only provide for shade and large wood. Limiting considerations for riparian reserves to potential wood inputs and shade arbitrarily compromises the stated purpose and need for recovery of [all] ESA listed species and clean water from watersheds. For example, since NSO habitat is of no consideration for riparian reserves the PRMP provides for removal of NSO habitat by thinning the outer Riparian Reserve to 60 TPA and 30% canopy. This narrow, arbitrary 2 parameter approach for riparian reserves is contrary to all scientific advances in wildlife/fisheries management that seeks

to integrate species management and avoid single species management (i.e., ecosystem management on which the No Action is based, see also the FEMAT publication). The purported 2 parameters for riparian reserves (wood and shade) do not fully meet the needs of ESA listed fishes because sediment filtering, nutrient filtering and durability in the face of floods, fires, and windstorms are ignored, ostensibly because they are difficult to model. There is no easy remedy for this conceptual error that was obviously crafted to provide increased ASQ timber harvest from former riparian reserves and an excuse to dismiss the needs of wildlife such as northern spotted owls, fishers, western pond turtles, red tree voles, flying squirrels marbled Murrelets and amphibians, to name a few.

Issue Number: PP-OR-RMPforWOr-16-12-102

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The elimination of survey and manage coupled with the elimination of half of the riparian reserves designed to mitigate connectivity issues facing BLM lands in the checkerboard will certainly have an impact on the ability of many BSS [Bureau Sensitive Species] to recolonize stands that mature in 50 years. This core assumption is flawed and BLM fails to explain why it may rationally rely on it.

Issue Number: PP-OR-RMPforWOr-16-12-111

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The analysis in the FEIS/PRMP improperly fails to account for the amount of illegal ORV use that occurs and will potentially violate these seasonal restrictions for known eagle nest sites. The BLM will be building extensive new roads,

and new roads create new access to certain areas that could lead to increased impacts on eagle breeding. This impact needs to be quantified and accounted for.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on Special Status Species, particularly regarding gray wolf dispersal, illegal off-road vehicles and new road construction impacts on eagles, and Riparian Reserve analysis and connectivity analysis for Special Status Species in general.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action. *Id.* The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

The Council on Environmental Quality’s regulations for implementing NEPA direct that “NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail” (40 CFR 1500.1[b]). Issues are “truly significant to the action in question” if they are necessary to make a reasoned choice between alternatives (i.e., the issue relates to how the alternatives respond to the purpose and need). Issues are also “truly significant to the action in question” if they relate to significant direct, indirect, or cumulative impacts caused by the alternatives (Chapter 3, Vol. 1, p118).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes Wildlife in Volume 2, Chapter 3 on pp. 825-1018 and more specifically discusses Bald Eagle (pp. 825-829), Golden Eagle (pp. 881-886), Gray Wolf (pp. 890-894) and Bureau Sensitive/Bureau Strategic Species (pp. 830-852). Potential effects to botanical Special Status Species are analyzed in Volume 1, Chapter 3 for Rare Plants and Fungi (pp. 517-554). Further analyses and tables are provided in Volume 4, Appendix S for Wildlife and Appendix N for Rare Plants and Fungi.

Gray wolf

The PRMP/FEIS states what is currently known regarding gray wolf pack distribution in the planning area, including providing updated information between the draft and proposed RMP since the wolf populations are rapidly expanding (Figure 3-165). PRMP/FEIS, p. 891. It is reasonably foreseeable that gray wolves will establish additional packs in the planning area in the future, given the observed increase in the wolf population in Oregon. PRMP/FEIS, p. 892. There is sufficient habitat in the planning area to support gray wolves. Land-use practices do not appear to be affecting viability of wolves and do not need modification to conserve the subspecies. Land development projects can render some areas less suitable for wolves, but land-use restrictions are not necessary to ensure conservation of the subspecies (78 FR 35681). *Id.* Gray wolves are capable of dispersing long distances; dispersal distances of 221 miles have been reported. PRMP/FEIS, p. 892-893. The PRMP/FEIS discloses that the amount of habitat for gray wolves would not change under the alternatives and the Proposed RMP, given the plasticity of gray wolves in using the landscape and their resilience to different land-use management regimes. PRMP/FEIS, p. 892. Thus, a gray wolf habitat model would not be informative or discerning among the alternatives and the Proposed RMP. The BLM considered all relevant, appropriate, and available information.

Illegal off-road vehicles and new road construction impacts on eagles

The BLM discloses that data are unavailable at this scale of analysis to predict location or effects of any widespread or systematic illegal OHV use (PRMP/FEIS p. 1265, 1965). Across the scale of the decision area, the BLM is unable to characterize the current illegal use or forecast impacts under any of the alternatives. The BLM assumed for analytical purposes that OHV users would operate vehicles in a legal manner consistent with BLM decisions about OHV use (PRMP/FEIS, pp. 762, 778). The Planning Criteria provides additional information on analytical assumptions, methods and techniques, and geographic and temporal scales, which is incorporated here by reference (USDI BLM 2014, pp. 115–119).

Under the PRMP/FEIS Management Objectives and Direction in Appendix B, the PRMP/FEIS discloses that the BLM will conserve or create habitat for species addressed by the Migratory

Bird Treaty Act and the Bald and Golden Eagle Protection Act and the ecosystems on which they depend (PRMP/FEIS, p. 1154). More specifically, BLM will prohibit operation of off-highway vehicles within 330 feet of bald eagle or golden eagle nests during the breeding season (PRMP/FEIS, p. 1155). In areas without forest cover or topographic relief to provide visual and auditory screening, operation of off-highway vehicles within 660 feet of bald eagle or golden eagle nests during the breeding season will be prohibited. *Id.* Management direction prohibits activities (including new road construction) that will disrupt bald eagles or golden eagles that are actively nesting. PRMP/FEIS, p. 1155. The BLM disagrees with the characterization that “extensive” new road building will occur. It is not possible, nor necessary, to identify and quantify locations of new roads and their proximity to eagle nests; such estimations would be speculative at this time. The protesters concerns about roads creating future access points would be addressed in site-specific, project-level analysis and decision-making for new road proposals.

Riparian Reserve analysis and connectivity analysis for Special Status Species in general

The protester is incorrect regarding reductions in riparian reserve and reserve lands overall. Under the No Action alternative, 66% of the BLM-administered lands were in reserve land allocations versus under the PRMP/FEIS in which 75% are in reserve land allocations providing more protections to both terrestrial and aquatic species (PRMP/FEIS, pp. 31, 81).

Through a lengthy identification process, both shade and large wood were identified as the main issues in the Riparian Reserve. The BLM developed this Riparian Reserve approach for the Proposed RMP together with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Environmental Protection Agency, as described in Chapter 4 of the PRMP/FEIS. The BLM based this delineation on critical habitat and high intrinsic potential streams. The PRMP/FEIS includes a detailed and quantified analysis of the effect of the alternatives on wood supply to streams, sediment delivery to streams, stream temperatures, and peak water flows. PRMP/FEIS, pp. 282-303, 369-414. The PRMP/FEIS discloses that, for each of these issues, some or all of the action alternatives would result in effects that are equally protective of ESA-listed fish as the No Action alternative and by proxy would be protective of other aquatic species. The combined Late-Successional Reserve designs alone were determined to be adequate habitat for the Northern spotted owl. PRMP/FEIS, p. 928. When combined with the Riparian Reserve and Other Reserves, they are more than adequate for the other Special Status Species noted by the protester and as identified in the Key Points of each Special Status Species section.

Additionally, the BLM provided a lengthy response to a similar comment regarding an analysis of connectivity for multiple species across checkerboard land ownerships (PRMP/FEIS, pp. 1847-1850). In summary, all action alternatives and the Proposed RMP would generally provide a larger network of habitat for Survey and Manage species and that the amount of habitat for Survey and Manage species would generally increase over time (PRMP/FEIS, p. 1850).

For all the reasons stated above, the BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts Special Status Species in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Northern Spotted Owl

Issue Number: PP-OR-RMPforWOr-16-03-1

Organization: Rogue Valley Audubon Society

Protester: Linda Kreisman

Issue Excerpt Text: The RMP broadly relies on “Ecological Forestry” practices, such as Variable Retention Harvest, to produce increased immediate harvest volume, and makes unwarranted and unproven assumptions about the effect of such practices on the two federally threatened species under consideration for endangered status: Northern Spotted Owl, and Marbled Murrelet.

Issue Number: PP-OR-RMPforWOr-16-03-2

Organization: Rogue Valley Audubon Society

Protester: Linda Kreisman

Issue Excerpt Text: The RMP discards all three critical ecological components of the Northwest Forest Plan: the Aquatic Conservation Strategy, LSRs, and Survey & Manage. This jeopardizes the ecological integrity of all public forests in Western Oregon, particularly in areas with mixed federal ownership, or as in the Oregon Coast Range with limited federal ownership. Thus, the RMP will invalidate the assumptions of such foundational documents as the Recovery Plan for the Northern Spotted Owl.

Issue Number: PP-OR-RMPforWOr-16-04-13

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The PRMP will decrease protections for the northern spotted owl by eliminating reserves or allowing logging within reserves. The PRMP would also designate by default numerous existing OHV trails within northern spotted owl nesting cores. These diminished protections will lead to a decrease in both habitat quantity and quality over the next 50 years and a decrease in quality over the next 100 years. Given that the loss of old-growth habitat has been the major cause of decline for the owl, adoption of the PRMP will increase the risk of extinction of the owl in violation of the Endangered Species Act.

Issue Number: PP-OR-RMPforWOr-16-12-118

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM did not take a hard look at how extensive logging in reserves would adversely affect the function of reserves in terms of conserving listed and unlisted late successional species, including spotted owls. Logging in reserves will reduce canopy cover, reduce thermal buffering, increase the risk of predation, and reduce recruitment of snags and dead wood.

Issue Number: PP-OR-RMPforWOr-16-12-185

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS does not adequately disclose the direct, indirect, and cumulative adverse effects of these habitat-modifying treatments that will likely be conducted with commercial logging that

removes primary constituent elements of spotted owl habitat.

Issue Number: PP-OR-RMPforWOr-16-12-186

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to take a hard look at the information and analysis relevant to this issue.

Issue Number: PP-OR-RMPforWOr-16-12-187

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM says that they may log to reduce fire effects for other purposes, not just to protect owl habitat, but they miss the key point which is that they failed to fully and accurately disclose the adverse effects of such logging on the spotted owl and other late successional wildlife.

Issue Number: PP-OR-RMPforWOr-16-12-190

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to take a hard look at the adverse effects of logging on spotted owl dispersal and foraging. See FEIS/PRMP at 1991. In particular, BLM failed to address significant information on the habitat requirements of spotted owls during natal dispersal.

Issue Number: PP-OR-RMPforWOr-16-12-193

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Public comments suggested larger reserves, wider stream buffers, more limitations on logging that would degrade habitat. BLM failed to respond. The available scientific information, e.g., Sovern et al 2015 (and other material cited in the DEIS comments), indicates BLM should retain 80% canopy cover in key dispersal corridors. As areas that require special management, these areas should have been designated as ACECs. To inform the public and the decision-maker these areas should be mapped. BLM has not explained its failure to provide protection for owl dispersal habitat consistent with the available scientific information and this failure is arbitrary.

Issue Number: PP-OR-RMPforWOr-16-12-195

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to take a hard look at the consequences of logging in the important east-west connectivity corridor north of Medford and Grants Pass, and mostly south of the Douglas County line.

Issue Number: PP-OR-RMPforWOr-16-12-196

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP failed to disclose and analyze the asymmetric effects of habitat removal (which has long-term effects) versus barred owl removal (which has short-term effects). BLM cannot assure that barred owl removal will be supported, funded, and implemented over the long term. If barred owl removal

efforts ever stop for any reason, the barred owl population may well recover relatively quickly – much more quickly than habitat can be regrown. It is therefore arbitrary and capricious to link habitat removal and barred owl removal. Spotted owl recovery requires both conservation of owl habitat AND removal of barred owl.

Issue Number: PP-OR-RMPforWOr-16-12-198

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS failed to take a hard look at the adverse effects of logging currently suitable owl habitat or delaying recruitment of owl habitat.

Issue Number: PP-OR-RMPforWOr-16-12-199

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP says, “Currently there is no substantive empirical evidence that northern spotted owls would be able to coexist with barred owls in the future as the effects of competitive interactions on the northern spotted owl are continuing to increase ...” This statement missed the point of considerable available evidence which shows that if BLM conserves all suitable habitat, BLM could increase the chances of co-existence and delay competitive exclusion, thus giving time for recovery options to be implemented (such as barred owl removal and recruitment of additional suitable habitat). BLM failed to take a hard look at the impacts of logging suitable habitat and the benefits of conserving all suitable habitat.

Issue Number: PP-OR-RMPforWOr-16-12-200

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to consider the reasonable effects of conserving all suitable habitat while ALSO removing barred owls. This skewed assessment is arbitrary and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-12-86

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM Failed to Consider the Benefits of Wide Riparian Reserves for Northern Spotted Owls. The BLM failed to take a hard look at the value of conserving wide riparian reserves for spotted owls and the adverse effects of shrinking riparian reserves. The 2011 Revised Recovery Plan for the Northern Spotted Owl showed that “slope position” was an important variable in the all the models used to predict spotted owl habitat suitability. Slope position seems to be relatively more important in the warmer provinces, which indicates that as the climate warms protecting lower slopes will likely be increasingly important in all provinces. See Appendix C of the U.S. Fish and Wildlife Service, Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) (2011) (U.S. Fish and Wildlife Service, Portland, Oregon XVI + 258 pp.).

Issue Number: PP-OR-RMPforWOr-16-13-25

Organization: Klamath-Siskiyou Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: In addition to Medford District documented overcutting of NSO habitat, Medford District also documented that thinned units are experiencing unanticipated blowdown which contributed to NSO habitat downgrading and removal. This is also important because BLM did not model wind throw in vegetation modeling (FEIS 314 footnote 56).

Issue Number: PP-OR-RMPforWOr-16-20-18

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: Use of an arbitrary 0.15 Barred Owl Encounter Rate in areas

that hypothetically may undergo barred owl control in the future violates NEPA and is arbitrary and capricious.

Issue Number: PP-OR-RMPforWOr-16-20-19

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The assumed 0.15 Barred Owl Encounter Rate was arbitrarily assigned to 10 percent of the O&C land base at the undocumented verbal suggestion of a single USFWS staffer, FEIS 1789, with no disclosure of any basis for the recommendation.

Summary:

The Western Oregon PRMP/FEIS fails to adequately analyze impacts to Northern spotted owl because:

- the barred owl encounter rate was arbitrarily assigned to BLM lands;
- the foundational documents of the Northwest Forest Plan are being discarded and will invalidate the assumptions of the Recovery Plan for the Northern Spotted Owl;
- reserves are eliminated and logging is allowed within reserves; BLM did not sufficiently analyze the effects of increased logging on owl habitat. BLM Failed to Consider the Benefits of Wide Riparian Reserves for Northern Spotted Owls. BLM failed to take a hard look at the impacts of logging suitable habitat and the benefits of conserving all suitable habitat;
- existing OHV trails within Northern Spotted Owl nesting cores diminish protections that will increase the owl's risk of extinction over the next 50-100 years; and
- BLM should retain 80% canopy cover in key dispersal corridors and the east-west connectivity corridor near Medford and Grants Pass. BLM did not sufficiently analyze impacts during foraging and dispersal

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

In the Western Oregon PRMP/FEIS, the Northern Spotted Owl was analyzed in Chapter 3 AE&EC – Wildlife on pages 938-999 and in Appendix T – Northern Spotted Owl on pages 1732-1792. The Proposed RMP would contribute to self-sustaining northern spotted owl populations in the eastern and western Cascades, and the Klamath Basin, during the next 50 years. The BLM evaluated the potential effects of the Proposed RMP on the northern spotted owl according to the specific criteria developed by the U.S. Fish and Wildlife Service in its Revised Recovery Plan, and used by the U.S. Fish and Wildlife Service to evaluate proposed actions in accordance with the Endangered Species Act of 1973, as amended. Specifically, the BLM designed its northern spotted owl analysis to determine if, under the Proposed RMP, the BLM would contribute to a landscape in the planning area that meets the four ‘habitat-dependent’ conservation needs of the northern spotted owl and manage its administered lands in the planning area in a manner that addresses the resources and processes described by Recovery Actions 6, 10, 12 and 32 of the Revised Recovery Plan (USDI FWS 2011a).

As stated in the Response to Comments in the PRMP/FEIS Appendix W (p. 1981), the BLM needs to revise existing plans to replace the 1995 RMPs’ land use allocations and management direction because of new scientific information and policies related to the northern spotted owl. Since the approval of the 1995 RMPs, there have been analyses on the effects of land management on northern spotted owl habitat, demographic studies, and analyses of the effects of barred owls on northern spotted owls. In addition, since that time, the U.S. Fish and Wildlife Service has developed new policies for northern spotted owls, including a revised recovery plan and a new designation of critical habitat (USDI BLM 2015, p. 5). The PRMP/FEIS analyzed the effect of the PRMP revision on northern spotted owl and on northern spotted owl habitat, including designated critical habitat.

Barred Owl

Implementation of a barred owl control program would appreciably improve the northern spotted owl population response under the PRMP in all modeled regions. In the North Coast and Olympic and Oregon Coast modeled regions, a barred owl control program would appreciably delay the probability of *de facto* extirpation of northern spotted owl populations. As stated in the Response to Comments in the PRMP/FEIS Appendix W (p. 1990), the BLM did provide an analysis of the effects of the alternatives at different barred owl encounter rates. The updated analysis used barred owl encounter rates based on the newest northern spotted owl meta-analysis by Oregon State University researcher Dr. Katie Dugger (the principal author of the meta-analysis; Dugger et al. 2016). The protester objects to the barred owl encounter rate used by the BLM, but fails to suggest an alternative encounter rate for use on BLM lands.

The PRMP/FEIS describes in detail the continuing conservation needs of the northern spotted owl related to habitat management by the BLM (USDI BLM 2015, pp. 774–804). Thus, the analysis in the PRMP/FEIS supports the conclusion that the greatest contribution to conservation

and recovery of the northern spotted owl by the BLM would come from a combination of habitat management and participation in barred owl management.

Relationship to the Northwest Forest Plan

The protester asserts that the foundational documents of the Northwest Forest Plan are being discarded and will invalidate the assumptions of the Recovery Plan for the Northern Spotted Owl and that the riparian reserves are eliminated.

However, the purpose and need for this RMP revision is different from the purpose and need for the Northwest Forest Plan and the 1995 RMPs (USDI BLM 2015, pp. 20–21). The Northwest Forest Plan, which contains the survey and manage, and its version of an Aquatic Conservation Strategy, is not a statute or regulation, and the BLM is not required to retain the purpose and need for the Northwest Forest Plan. The BLM adopted a purpose and need for this RMP revision that is consistent with the agency’s discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes, as detailed in Chapter 1. The PRMP/EIS explains why some elements of the Northwest Forest Plan are not included in the action alternatives in the PRMP/EIS, with specific detail on the Survey and Manage and the Northwest Forest Plan’s version of the Aquatic Conservation Strategy (USDI BLM 2015, pp. 21–23). Nevertheless, the PRMP maintains elements of the survey and manage, and includes its own updated Aquatic Conservation Strategy.

The PRMP/FEIS explained that the BLM does not need the Survey and Manage measures to avoid species extinctions, avoid disruptions to sustained-yield timber management, or to achieve the purposes of the RMP revision or to meet BLM’s obligations under applicable law and regulation. The Proposed RMP represents a management approach that provides habitat for species “associated with old-growth forest conditions.” As detailed in the analysis in the Proposed RMP/Final EIS, the Proposed RMP would:

- Allocate a larger Late-Successional Reserve network than the No Action alternative;
- Reserve all of the older and more structurally-complex forests, which generally represents “old-growth forest conditions” and thus, by definition, provides high quality habitat for Survey and Manage species;
- Reserve more of the combined mature and structurally-complex forest—which provides potential habitat for Survey and Manage species—than the No Action alternative;
- Provide management direction within the Harvest Land Base to provide for snags, down woody debris, leave trees and islands, and a diversity of tree species in the canopy layer,
- which would maintain diversity at the stand level, providing a variety of unique habitat conditions to support diverse fungi, lichens, bryophytes, and vascular plants, including Survey and Manage species; and
- Continue to provide management for many of the Survey and Manage species as Bureau Sensitive species (see the Rare Plants and Fungi and Wildlife sections of Chapter 3).

As a result of these allocations and management direction, the Proposed RMP would protect the majority of the currently known sites of Survey and Manage species, including spotted owl, in the reserve land use allocations and would provide a greater increase in the amount of potential habitat for Survey and Manage species over time than the No Action alternative, as detailed in

the Rare Plants and Fungi and Wildlife sections of Chapter 3 and Appendix S, Other Wildlife (e.g., Table 3-2, Table 3-3, Table 3-4, Table S-5, Table S-6).

Finally, the Management Objectives and Direction in the PRMP as stated below maintain the objectives from the NWFP Aquatic Conservation Strategy as they relate to riparian reserves (USDI BLM 2015, Appendix W, pp.1842).

Riparian Reserve management objective

Maintain and restore natural channel dynamics and processes and the proper functioning condition of riparian areas, stream channels and wetlands by providing forest shade, sediment filtering, wood recruitment, stability of stream banks and channels, water storage and release, vegetation diversity, nutrient cycling and cool and moist microclimate.

Riparian Reserve management direction

Design culverts, bridges, and other stream crossings for the 100-year flood event, including allowance for bed load and anticipated floatable debris. Design stream crossings with ESA-listed fish to meet design standards consistent with existing ESA consultation documents that address stream crossings in the decision area.

The Late-Successional Reserve designs of the Proposed RMP make similar contributions to the development and spacing of the large habitat blocks needed for northern spotted owl conservation.

OHV and Impacts to Northern Spotted Owl

The Proposed RMP would increase the acreage of areas *closed* to public motorized access and would not designate any areas as *open* to public motorized access. Additionally, the BLM is deferring implementation-level travel management planning in accordance with current BLM policy (see the Trails and Travel Management section of Chapter 3). The BLM is making area designations of *open*, *limited*, or *closed* for public motorized access through this RMP revision. Implementation-level travel management planning will evaluate each route, applying the minimization criteria contained in 43 CFR 8342 and the direction in BLM Manual 1626 – Travel and Transportation (USDI BLM 2011a) and BLM Handbook 8342 – Travel and Transportation Handbook (USDI BLM 2012), which provides policy guidance for incorporating the BLMs Travel and Transportation Management (TTM) planning decisions into the land use planning process. Under this policy, the area designation of *limited* to existing roads and trails is an appropriate use of the allocation until the BLM completes an implementation-level travel management plan. Additionally, as noted in Comment #348 of Appendix W of the PRMP/FEIS, the effects of OHV use on northern spotted owl are incorporated among the change elements in the GNN data used for habitat modeling (PRMP/FEIS, p. 1986).

East-West Movement of Northern Spotted Owls

BLM-administered lands are indispensable for northern spotted owl reproduction, movement and survival in the Coast Range, and in western and central portions of the Klamath Basin, in supporting north-south species movement through the Coast Range, and east-west species movement between the Coast Range and western Cascades. Northern Spotted Owl issue 2: “*would the alternatives contribute to a landscape in the planning area that facilitates northern*

spotted owl movement between and through large blocks of nesting, roosting, and foraging habitat and ensures the survival of dispersing owls?”, is described and analyzed on pages 941-947. In summary, the BLM would contribute to a Western Oregon landscape that, within 30 to 50 years, supports northern spotted owl movement between the physiographic provinces, and between and through the large blocks of nesting, roosting, and foraging habitat within each physiographic province. Because this conservation need is not specific to BLM-administered lands, the BLM forecasted the development of northern spotted owl dispersal habitat on all lands in the planning area during the next 50 years. The protester cites Sovern *et al.* (2015) to support their recommendation for canopy retention requirements of 80 percent. This article offers recommendations for canopy cover requirements that differ from those within the PRMP/FEIS, but does not include any scientific information that would alter the analysis or conclusions in the PRMP/FEIS.

Specifically, the BLM used analytical methods to address Conservation Need 1 and thus Issue 1 as described in the Wildlife Section on pages 932-936 that included information by Thomas *et al.* (1990). This review described northern spotted owl “nesting, roosting, and foraging habitat” as “multi-layered, multispecies canopy dominated by large (greater than 30 inches diameter at breast height) conifer overstory trees, and an understory of shade-tolerant conifers or hardwoods; a moderate to high (60 to 80 percent) canopy closure.

In addition to northern spotted owl movement between habitat blocks, Conservation Need 2 addresses habitat conditions outside habitat blocks that support the survival of dispersing northern spotted owls (i.e., all life functions until a northern spotted owl can establish a territory). In the Draft RMP/EIS (USDI BLM 2015, pp. 765–773) the BLM modeled how northern spotted owls would move and survive across the planning area (i.e., dispersal flux) under each alternative and over time. The BLM determined that, under all alternatives, change in simulated northern spotted owl movement and survival over time primarily was a function of competitive interactions between northern spotted owls and barred owls, as opposed to habitat changes resulting from BLM planning decisions (USDI BLM 2015, p. 773).

Nesting and Foraging Habitat

“The Draft RMP/EIS identified that maintaining large, contiguous blocks of late-successional forest is a part of the purpose for the action, based on scientific information, the results of previous analyses, and the recommendations in the northern spotted owl revised recovery plan (USDI BLM 2015, pp. 7–8). Although scientists first identified large blocks of older forest as a conservation need of the northern spotted owl in 1990, the importance of such large blocks has been reaffirmed by ongoing science. The Draft RMP/EIS cited the most recent research in this area, which validates the importance of older forest conditions and managing for large blocks of unfragmented older forest (USDI BLM 2015, p. 774). The U.S. Fish and Wildlife Service upheld the need for large blocks of older forest in the 2011, revised recovery plan for the northern spotted owl, and the 2012 final rule on northern spotted owl critical habitat.

The U.S. Fish and Wildlife Service also identified management needs *in addition to* large blocks of older, contiguous forest specifically to help compensate for the loss of such blocks fragmented by past management actions. As the U.S. Fish and Wildlife Service stated in the 2012 final rule on critical habitat (77 FR 71908):

“The natural ecological processes and landscape that once provided large areas of relatively contiguous northern spotted owl habitat (especially on the west side of the Cascade Range) have been altered by a history of anthropogenic activities, such as timber harvest, road construction, development, agricultural conversion, and fire suppression. The resilience of these systems is now additionally challenged by the effects of climate change. As recommended in the Revised Recovery Plan for the Northern Spotted Owl, active forest management may be required throughout the range of the owl with the goal of maintaining or restoring forest ecosystem structure, composition, and processes so they are sustainable and resilient under current and future climate conditions, to provide for the long-term conservation of the species (USFWS 2011, p. III–13).” (PRMP/FEIS, pp. 1982, 1983)

In conclusion, the BLM complied with NEPA’s requirement and sufficiently analyzed the environmental consequences/impacts of the PRMP/FEIS actions on Northern Spotted Owl.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Marbled Murrelet

Issue Number: PP-OR-RMPforWOr-16-03-1 (*Other Section: NSO*)

Organization: Rogue Valley Audubon Society

Protester: Linda Kreisman

Issue Excerpt Text: The RMP broadly relies on “Ecological Forestry” practices, such as Variable Retention Harvest, to produce increased immediate harvest volume, and makes unwarranted and unproven assumptions about the effect of such practices on the two federally threatened species under consideration for endangered status: Northern Spotted Owl, and Marbled Murrelet.

Issue Number: PP-OR-RMPforWOr-16-12-114

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The Northwest Forest Plan has wide riparian reserves. The PRMP has narrow riparian reserves. The difference between these two would be reallocated to match the adjacent land allocation, in many cases Harvest Land Base. This means that thousands of acres of current and potential Murrelet habitat, currently protected as riparian reserves, would be reallocated to Harvest Land Base and subject to regeneration harvest resembling clear-cutting. BLM’s NEPA analysis is misleading to the public and the decision-maker because it does not make this change in reserve width and the attendant change in allowable harvest methods explicit and does not analyze the effects of this change on Murrelets. BLM also says “more of the current marbled Murrelet nesting habitat would be within reserve land use allocations

under the action alternatives and the Proposed RMP.” FEIS/PRMP at 1978. But BLM failed to recognize that the riparian reserves were intended to grow more habitat for marbled Murrelets, and by radically reducing stream buffers, BLM is foregoing the opportunity to grow additional Murrelet habitat near streams where they need it most.

Issue Number: PP-OR-RMPforWOr-16-12-115

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM’s failure to do so leaves an important aspect of the environmental impacts of its action unaddressed and unanalyzed contrary to the requirements of NEPA.

Issue Number: PP-OR-RMPforWOr-16-12-116

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In the FEIS/PRMP, the BLM arbitrarily limited its survey requirements for marbled Murrelets to 35 miles inland despite evidence in Oregon that Murrelets nest up to 47 miles inland. In response to a comment identifying this flaw, the BLM states that relatively few nest sites would be lost on BLM lands that are from 35 miles to 50 miles inland. The BLM cannot know this absent surveys, and this unsupported assumption violates both the marbled Murrelet recovery plan, the BLM’s BSS policy, and NEPA.

Issue Number: PP-OR-RMPforWOr-16-12-81

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: By halving riparian reserves and by eliminating protection for stands over 80 years old in LSRs, BLM fails to meet the recommendations of the marbled Murrelet Recovery Plan.

Issue Number: PP-OR-RMPforWOr-16-12-82

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In nesting, roosting, foraging habitat, BLM can log down to 60% canopy cover even if it degrades habitat.

Issue Number: PP-OR-RMPforWOr-16-12-83

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM violates the Endangered Species Act by failing to conserve habitat for marbled Murrelet as recommended in the recovery plan, e.g., BLM must close the loopholes for logging in LSRs and riparian reserves and limit logging within the range of the marbled Murrelet to stands less than 80 years old.

Issue Number: PP-OR-RMPforWOr-16-12-84

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to recognize that the riparian reserves were intended to grow more habitat for marbled Murrelets, and by radically reducing stream buffers, BLM is foregoing the opportunity to grow additional Murrelet habitat near streams where they need it most.

Summary:

The PRMP/FEIS fails to adequately analyze impacts to Marbled Murrelet because:

- BLM violates the marbled Murrelet recovery plan, the BLM's Bureau Special Status policy, and NEPA in part by only surveying for nests 35 miles inland;
- BLM did not comply with the ESA as it relates to marbled Murrelet;
- BLM failed to analyze the impacts of eliminating the riparian reserve concept from NWFP and reducing the size of riparian corridors; therefore allowing for more logging close to streams; and
- BLM made assumptions to assess the effects on Marbled Murrelet.

Response:

The BLM has complied with NEPA's requirement to analyze the environmental consequences/impacts to Marbled Murrelets in the PRMP/FEIS. NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and

alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The PRMP/FEIS used the most recent scientific information on the biological condition of the marbled Murrelet across the planning area: Huff et al. 2006, Nelson et al. 2006, McShane et al. 2004, USDI USFWS 2004 5-year review, and others (PRMP/FEIS, pp. 895-918). The PRMP/FEIS used this scientific information, along with direction from the 1997 Final Recovery Plan to assess the effects of the PRMP on both short- and long-term conservation needs of the marbled Murrelet. Short-term actions to stabilize Murrelet populations include maintaining occupied habitat and large blocks of suitable habitat. Long-term actions include increasing the amount and distribution of nesting habitat and decreasing threats to survivorship.

The U.S. Fish and Wildlife Service published its final rule on marbled Murrelet critical habitat in January 1996. Approximately 463,000 acres of critical habitat occur on BLM-managed lands (PRMP/FEIS, pp. 897-899). In order to facilitate impact analysis in the PRMP/FEIS, marbled Murrelet nesting habitat was modeled as stands in the mature (with multilayered canopy) and structurally complex forest structural stages (PRMP/FEIS, pp. 1715-1730). In the PRMP/FEIS, the Marbled Murrelet was analyzed in Chapter 3 on pages 895-918, and in Appendix S on pages 1715-1730.

The BLM has complied with the ESA. Chapter 4 of the FEIS describes the coordination and consultation process with both the USFWS and NMFS (USDI BLM 2015, pp. 1049-1051). The protesters assert that the BLM is not consistent with the recovery plan for the marbled Murrelet; recovery plans are advisory in nature, rather than regulatory. However, management direction common to all alternatives and the Proposed RMP would require the BLM to manage ESA-listed species (e.g., marbled Murrelets) consistent with recovery plans and designated critical habitat, including the protection and restoration of habitat; altering the type, timing, and intensity of actions, and other strategies designed to recover populations of species. The Proposed RMP includes additional management direction designed to contribute to the conservation and recovery of all ESA-listed species, including marbled Murrelet. The proposed management direction would require the BLM to manage habitat to maintain populations of ESA-listed, proposed, and candidate species. Through consultation with the USFWS, the PRMP incorporates numerous protections for the species and their habitat into the objectives and management direction (Appendix B).

The Marbled Murrelet Recovery Plan designated six conservation zones (USDI USFWS 1997). The recovery objectives for the marbled Murrelet are measured in each conservation zone, with the objective of ensuring a well-dispersed population of marbled Murrelets. The entire conservation Zone 3 and the northern half of conservation Zone 4 overlay the PRMP planning area.

The 226 currently occupied marbled Murrelet sites on BLM-managed lands would continue to receive protection under the PRMP. Future occupied sites and adjacent recruitment habitat would be protected under the PRMP because management direction under the PRMP requires pre-project surveys in suitable habitat and protection for identified occupied sites. The Draft

RMP/EIS analyzed a range of strategies to contribute to the conservation and recovery of marbled Murrelets. Under the Proposed RMP, the BLM would protect all current occupied marbled Murrelet sites (USDI BLM 2015, pp. 899-918; see the Wildlife section of Chapter 3).

In general, the Proposed RMP would result in an increase in the amount of marbled Murrelet high-quality nesting habitat and total nesting habitat in 50 years in the decision and planning areas. The BLM would protect all older, more structurally-complex forest through the designation of such stands as Late-Successional Reserve, which would benefit marbled Murrelets. The BLM analyzed the effects of the PRMP on patch size of marbled Murrelet nesting habitat and discussed the effects of smaller or larger patches on marbled Murrelets in Chapter 3. PRMP/FEIS, pp. 899-918.

As explained in the Draft RMP/EIS, the BLM describes the inland range of the marbled Murrelet based on the two management zones for the marbled Murrelet established in the Northwest Forest Plan: Zone 1 from the coast to approximately 35 miles inland, and Zone 2 from the eastern boundary of Zone 1 to approximately 50 miles inland from the coast. PRMP/FEIS, p. 898. Marbled Murrelet nesting has been documented only up to 47 miles from the coast in Oregon. Therefore, the BLM considers the effects to marbled Murrelets and their habitat within 50 miles of the coast as the appropriate geographic scope.

The protester asserts that BLM failed to analyze the impacts of eliminating the riparian reserve concept from NWFP and is reducing the size of riparian corridors. However, the purpose and need for this RMP revision is different from the purpose and need for the Northwest Forest Plan and the 1995 RMPs (USDI BLM 2015, pp. 20–21). The Northwest Forest Plan, which contains its own version of an Aquatic Conservation Strategy, is not a statute or regulation, and the BLM is not required to retain the purpose and need for the Northwest Forest Plan. The BLM adopted a purpose and need for this RMP revision that is consistent with the agency's discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes, as detailed in Chapter 1. The PRMP/EIS explains why some elements of the Northwest Forest Plan are not included in the action alternatives in the PRMP/EIS, with specific detail on the Survey and Manage and the Northwest Forest Plan's Aquatic Conservation Strategy (USDI BLM 2015, pp. 21–23). Nevertheless, the PRMP maintains elements of survey and manage and includes its own, updated Aquatic Conservation Strategy.

The Management Objectives and Direction in the PRMP as stated below maintain the objectives from the NWFP Aquatic Conservation Strategy as they relate to riparian reserves (USDI BLM 2015, Appendix W, pp1842).

Riparian Reserve management objective

Maintain and restore natural channel dynamics and processes and the proper functioning condition of riparian areas, stream channels and wetlands by providing forest shade, sediment filtering, wood recruitment, stability of stream banks and channels, water storage and release, vegetation diversity, nutrient cycling and cool and moist microclimate.

Riparian Reserve management direction

Design culverts, bridges, and other stream crossings for the 100-year flood event, including allowance for bed load and anticipated floatable debris. Design stream crossings with ESA-listed fish to meet design standards consistent with existing ESA consultation documents that address stream crossings in the decision area.

The assumptions used in the PRMP/FEIS as the basis for conclusions on Murrelet habitat, even when considering apparently conflicting research, conclude that more habitat is better for the Murrelet, larger blocks of habitat are better for the Murrelet, and less edge is better for the Murrelet. Using these scientific criteria, the quantity of marbled Murrelet nesting habitat on BLM-administered lands in the planning area would increase under all alternatives by 2106. Under the PRMP, patch and core area size would increase by 2106 in mature and structurally complex stands in the Coast Range and Klamath Provinces. This increase would indicate improving nesting habitat conditions for the marbled Murrelet. The increase in core area size would offset increases in edge density (PRMP/FEIS at 4-696 to 4-697).

In conclusion, the BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to Marbled Murrelets in the PRMP/FEIS.

*NEPA – Effects Analysis – Wildlife, Fish & Plants – North Oregon Coast
Distinct Population Segment of the Red Tree Vole*

Issue Number: PP-OR-RMPforWOr-16-12-104

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM also makes an abrupt departure from an assumption in the DEIS that all vole sites are critical to persistence north of Highway 20. This was a key conclusion of the FWS' warranted but precluded finding for the vole that was published recently and was the latest study of voles in Oregon. The BLM disavows this statement, but provides no rationale scientific or otherwise for making this about face. The BLM merely states that the status of voles in this area is unknown. This is insufficient – incorrectly asserting ignorance does not excuse the failure to take a hard look at potential impacts as required under NEPA, and the latest and most up-to-date science on the species, incorporated in the DEIS, states that all sites north of Highway 20 are critical to persistence. Yet the PRMP plans on removing many of these sites and will not protect them all. Thus the PRMP

will contribute towards the need to list the species.

Issue Number: PP-OR-RMPforWOr-16-12-103

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM provides very little analysis of the significant portion of this species' population south of Highway 20. In fact this portion of the population is critical to the long-term persistence of the species because the FWS determined that regardless of the conservation measures put into place for the species north of Highway 20, the existing vole population north of the Siuslaw will fail. Therefore, protection, survey, and monitoring of the red tree vole is especially needed in the rest of the species range in Oregon. Neglecting this significant portion of the species' range and failing to take a hard look at the impacts of the PRMP on it and the potential for these impacts to contribute to future listing is a violation of NEPA and contrary to law.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on the North Oregon Coast Distinct Population Segment (DPS) of the Red Tree Vole, particularly in not providing a rationale for statements, not using the best available information to assess the persistence of the species north of Highway 20, failing to protect known sites, and not analyzing the existing vole population south of Highway 20 within the Distinct Population Segment.

Response:

The Western Oregon PRMP/FEIS has appropriately analyzed the impacts of the alternatives on the North Oregon Coast Distinct Population Segment of the Red Tree Vole. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to

take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision-maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes the North Oregon Coast Distinct Population Segment of the Red Tree Vole in Chapter 3 pp. 919-927. The PRMP/FEIS discloses the amount of habitat (acres) by percent for the Distinct Population Segment for the PRMP and all alternatives compared to the 2013 baseline in the mature, late-successional or old-growth forest associate (PRMP/FEIS, p. 1674 (Table S-33)). The BLM further disclosed habitat development for the species in the Distinct Population Segment (PRMP/FEIS, pp. 1730-31 (Tables S-108 to S-110)). The BLM provided specific responses to comments about this species in Appendix W. PRMP/FEIS p. 1979.

The management direction directs the BLM to protect red tree voles north of Highway 20 by conducting pre-disturbance surveys and known site management. PRMP/FEIS, p. 919. The protester incorrectly states that the Proposed RMP plans on removing many of these sites. Under all action alternatives and the Proposed RMP, management direction in reserves would largely limit stand treatments to thinning to improve habitat conditions and would generally preclude stand treatments that would remove or degrade Mature and Structurally-complex habitat. PRMP/FEIS, p. 924.

The protester is also incorrect in asserting that the BLM ignored the USFWS’ 12 month finding on this DPS. The BLM did consider the information in the 12-Month Finding. PRMP/FEIS, p. 919. For example, the 12 month finding specifically acknowledges that “standardized

quantitative data are not available to rigorously assess population trends of red tree voles.” 76 (198) Fed. Reg. 63,720, 63,740 (October 13, 2011). The BLM, relying on that statement in the 12 month finding, acknowledged that there are uncertainties around the North Coast DPS (PRMP/FEIS, pp. 919, 1979).

The protester also incorrectly states that the BLM did not analyze the existing vole population south of Highway 20 within the Distinct Population Segment. The BLM analyzed the entire geographic area within the Distinct Population Segment and the areas north and south of Highway 20 (PRMP/FEIS, pp. 920-921). The BLM disclosed the results of that analysis in the PRMP/FEIS (*Id.*). Additionally, the Analysis of the Management Situation for the RMPs for Western Oregon provides more information on the species range, population trend, and threats (USDI BLM 2013, pp. 145-146), and was incorporated by reference (PRMP/FEIS, p. 919). Finally, the red tree vole habitat on BLM lands south of Highway 20 will mostly be protected as the vast majority of red tree vole habitat south of Highway 20 (approximately 92 percent) is allocated to reserve land use allocations under the Proposed RMP (PRMP/FEIS, p. 926).

For all the reasons stated above, the BLM complied with NEPA’s requirement to analyze the environmental impacts to red tree voles in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Oregon Spotted Frog

Issue Number: PP-OR-RMPforWOr-16-12-105

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM falsely assumes that no activity except for grazing

will impact the Oregon Spotted Frog. Logging activities and associated road construction could potentially impact the species as well and a failure to take into account these effects or disclose them is a violation of NEPA.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on the Oregon spotted frog, particularly in regards to logging activities and road construction.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*).

The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982))). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision-maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative

impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes the Oregon spotted frog in Chapter 3 (PRMP/FEIS, pp. 1002-1005). As the Oregon spotted frog is an aquatic species, the BLM analyzed one particular issue under this PRMP/FEIS, the levels of habitat for the species under each alternative (*Id.*). Of the 99,743 acres of Oregon spotted frog habitat in the planning area, only 286 acres of habitat are on BLM-administered lands. PRMP/FEIS, p. 1003. The USFWS identified grazing in wetland habitat as the primary threat to the species. *Id.* Accordingly, the BLM analyzed the effects to the species and habitat from grazing under the PRMP. *Id.* Effects to wetlands (the frog's habitat) from logging are addressed in the section on Hydrology (PRMP/FEIS, p. 409).

For the reasons stated above, the BLM complied with NEPA's requirement to analyze the environmental impacts to the Oregon spotted frog in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Fisher (*Martes pennanti*)

Issue Number: PP-OR-RMPforWOr-16-12-106

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: There are some major flaws with this population estimation. First, the BLM assumes that all suitable habitat is occupied without providing a rational or scientific basis for this assumption. This dramatically overstates population levels and renders projected declines in the population insignificant in terms of predicting whether or not the PRMP will contribute to the need to list the species. Some on-the-ground analysis needs to occur to predict fisher population levels. The BLM needs to conduct some plot samples of fisher habitat to determine what percentage of suitable habitat is indeed occupied and use this percentage in relation to total occupied habitat. As the BLM recognizes, fishers have faced mortality from a variety of sources and it is incredibly likely that all suitable habitat is not occupied. Failure to conduct this analysis is a failure to take a hard look at fisher impacts. Failing to conduct this analysis renders a conclusion about the PRMP's contribution to the need to list the species without factual support.

Issue Number: PP-OR-RMPforWOr-16-12-107

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM radically overstates the amount of fisher habitat

because it includes all denning, resting and foraging habitat in its population model. While the BLM assumes that “denning habitat would also provide resting and foraging functions, that resting habitat would also provide foraging function, and that foraging habitat would only provide foraging function,” FEIS/PRMP at 873, the population model simply lumps it all together and derives population predictions from those numbers.

Issue Number: PP-OR-RMPforWOr-16-12-108

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM claims that other causes of mortality to the fisher are unpredictable. This is completely untrue.

Issue Number: PP-OR-RMPforWOr-16-12-110

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM claims that it did not address barriers to fisher dispersal, like roads, because denning habitat and structures are a bigger concern for the species. Simply because one influencing factor on the species is greater than another does not excuse the BLM's failure to analyze or take into account that factor.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives, particularly regarding the amount of fisher habitat based upon modeling, habitat occupancy, causes of mortality, and dispersal barriers.

Response:

The BLM has appropriately analyzed the impacts of the alternatives regarding the amount of fisher habitat in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action. *Id.* The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts. *Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision-maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes the fisher (PRMP/FEIS, pp. 870-880). Further analyses and tables are provided in Appendix S. PRMP/FEIS, pp. 1701-1713. Within these analyses the results for denning, resting, and foraging habitat are broken out separately by acres as well as being summarized (*Id.*).

The PRMP/FEIS clearly states that the BLM estimated the fisher population in the planning area by emulating methods used by the U.S. Forest Service in the Bybee Forest Vegetation Management Project, as suggested by the U.S. Fish and Wildlife Service (PRMP/FEIS, p. 873).

The BLM also disclosed that other factors influence fisher populations, which are not predictable and which are unaffected by BLM land management actions (e.g., mortality from toxicants and vehicle collisions). *Id.* These other factors were not included in estimating fisher populations (*Id.*). The BLM disclosed that these estimates of the fisher population are approximate and the absolute population numbers should be interpreted with great caution (*Id.*). The BLM estimated population numbers only to provide the public and the decision maker with information about the relative outcomes of the fisher population under the alternatives and the Proposed RMP (*Id.*).

The BLM analyzed and disclosed the potential effects to fisher under the alternatives (PRMP/FEIS, pp. 871-880). The BLM used the information available to the agency for that analysis (PRMP/FEIS, p. 873). The BLM disclosed that the available information was not complete, described why the missing information was not available, and the assumptions that went into the analysis (*Id.*). The BLM did not speculate about all conceivable effects, but focused on the effects for which there was a close relationship between the alternatives and the changes to the environment (*Id.*). The PRMP/FEIS did not identify barriers to fisher dispersal, because the BLM does not regard dispersal as a limiting factor for the species (PRMP/FEIS, p. 1974). As such, additional identification and analysis suggested by the protester is not necessary and would not lead to a reasoned choice between the alternatives. The protester fails to identify an error in BLM's decision.

The BLM complied with NEPA's requirement to analyze the environmental impacts to fisher in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Gentner’s fritillary (Fritillaria gentneri)

Issue Number: PP-OR-RMPforWOr-16-04-14

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: *Fritillaria gentneri*. The PRMP has ignored impacts associated with OHV use on the habitat of the rare *Fritillaria gentneri*. Numerous unauthorized OHV trails have been documented in the Medford District BLM OHV Monitoring Project impact individual plants, populations, and habitat for the Gentner’s

fritillaria. The PRMP and FEIS did not disclose or analyze these impacts and many of the “existing” OHV routes proposed to remain open in “limited to existing” designations have not been surveyed for this rare species or other rare plant species. The designation of these trails without adequate survey work, NEPA analysis or disclosure of cumulative impacts is a violation of NEPA and the Endangered Species Act. The PRMP will increase the risk of extinction of the *Fritillaria gentneri* in violation of the Endangered Species Act.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on *Fritillaria gentneri*, particularly in regards to unauthorized OHV trail impacts to individual plants, populations, and habitat. The BLM violated the ESA, because the Proposed RMP will increase the risk of extinction to the species.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action. *Id.* The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM analyzed and disclosed the potential effects of the Proposed RMP to *Fritillaria gentneri* in the Rare Plants and Fungi section of the document (PRMP/FEIS, pp. 517-554). The BLM disclosed that data is unavailable at this scale of analysis to predict location or effects of any widespread or systematic illegal OHV use (PRMP/FEIS, p. 1265). Across the scale of the decision area, the BLM is unable to characterize the current illegal use or forecast impacts under any of the alternatives (*Id.*). The BLM assumed for analytical purposes that OHV users would operate vehicles in a legal manner consistent with BLM decisions about OHV use (PRMP/FEIS, pp. 762, 778). The Planning Criteria provides additional information on analytical assumptions, methods and techniques, and geographic and temporal scales, which is incorporated here by reference (USDI BLM 2014, pp. 115–119).

The protester asserts that the BLM violated the ESA, because the Proposed RMP will contribute to the extinction of the species. This assertion is not supported by the analysis or the findings in the PRMP/FEIS. The BLM would conduct pre-disturbance surveys and apply conservation measures under the Proposed RMP, regardless of land use allocation (PRMP/FEIS, p. 534). The BLM would manage the ESA-listed species consistent with the recovery plan, which includes the protection and restoration of habitat; altering the type, timing, and intensity of actions; and other strategies designed to recover populations (PRMP/FEIS, p. 533). Additionally, project-level decisions would be subject to further NEPA compliance, decision-making processes, and consultations (e.g., ESA consultation) as appropriate (PRMP/FEIS, p. 1998).

The BLM analyzed and disclosed in detail the potential impacts of public motorized access designations on rare plants (PRMP/FEIS, p. 522). Impacts to rare plants and fungi would vary with the restrictions on OHV use. Areas designated as *limited* would not experience measureable additional habitat disturbance for rare plants and fungi, because the BLM would limit public motorized vehicle use to existing or designated roads and trails (*Id.*). Transportation management planning would occur on a site-specific basis within 5 years and would be subject to the NEPA process and consultation process, as appropriate.

The BLM complied with NEPA's requirement to analyze the environmental impacts to *Fritillaria gentneri* in the PRMP/FEIS.

NEPA – Effects Analysis – Wildlife, Fish & Plants – Fisheries

Issue Number: PP-OR-RMPforWOr-16-13-18

Organization: Klamath-Siskiyou
Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: The FEIS is wrong because it failed to adequately disclose the ongoing degradation of stream habitat due to livestock grazing and its serious adverse effect on ESA listed Coho salmon (Medford District) and to a lesser extent adverse grazing impacts on ESA listed shortnose sucker (Klamath Falls Field Office).

Issue Number: PP-OR-RMPforWOr-16-12-60

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: “The evaluation of proposed thinning in the Riparian Reserve under the Proposed RMP or any action alternative would be solely a test of conformance with the applicable management direction. Under the Proposed RMP and all action alternatives, there would be no “burden of proof” related to thinning in the Riparian Reserve beyond evaluating whether the action would be consistent with the management direction (as with all implementation actions), and there would be no test of such thinning against “attainment of conservation goals.” This statement appears to indicate that BLM may conduct logging that knowingly harms fish as long as the management direction is met. BLM failed to take a hard look at the adverse consequences of this significant change in direction or explain why the above statement does not constitute such a change.

Issue Number: PP-OR-RMPforWOr-16-12-73

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS is wrong because it grossly underestimates road related sediment impacts to listed fishes. The analysis misleads the State Director about the extent and seriousness of degraded streambed conditions of class 1 watersheds due to road related sediment. The statements in the FEIS that road related sediment has only local effects or is harmlessly flushed from the stream system is conjecture and not based on the best available science (See the FEMAT and our comment letter for science based analysis of sediment). The PRMP seems to rely entirely on BMPs for sediment control. While BMPs are necessary they are not sufficient to make significant reductions in road related sediment. Sediment from logging and roads is repeatedly identified by NMFS as a threat to SONCC Coho in the SONNC recovery plan yet the PRMP fails to require needed recovery actions to foster clean water and the recovery of SONNC Coho salmon. Research has shown that adult Coho numbers are positively correlated with reduced road densities. The PRMP does not meet its purpose and need with respect to reducing sediment pollution from roads.

Issue Number: PP-OR-RMPforWOr-16-12-74

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS is also wrong in claiming that SONNC Coho salmon in the Medford District are stable or status unchanged. Huntley Park Coho salmon counts show declines since 2004

indicating no sustained improvement of freshwater habitat. Coho counts at Huntley Park in 2015 were only 20% of the ten year average indicating continued failure of fresh water habitat to produce adequate numbers of smolts.

Issue Number: PP-OR-RMPforWOr-16-42-1

Organization: Individual

Protester: Grace Brogdon

Issue Excerpt Text: The reduced riparian zones in the new RMP go directly against the input BLM has received from NOM and from Fish and Wildlife. Decreased shade on the bank decreases water in the creek while increased thinning in riparian zones creates

silty run-off both of which impact the viability of fisheries. The EIS does not adequately address the cost to fisheries.

Issue Number: PP-OR-RMPforWOr-16-35-3

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The proposed plan reduces stream side buffers designed to protect watersheds and aquatic and terrestrial species that rely on them, especially threatened native fish populations. The FEIS failed to disclose how salmon and other wildlife can be conserved with smaller streamside buffers.

Summary:

The Western Oregon PRMP/FEIS inadequately analyzed or did not analyze the effects of the alternatives on Fisheries, particularly from livestock grazing, road and thinning-related sediment, site specific Coho salmon trends, thinning in Riparian Reserve, and reduced riparian zone width.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the PRMP/FEIS (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment (*Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983)).

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving a timber sale contract to start harvesting timber), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The PRMP/FEIS discusses and analyzes Fisheries in Volume 1, Chapter 3 on pp. 277-305 and Volume 3, Appendix I on pp. 1333-1344. The Fisheries analyses frequently are based on initial Hydrology section analyses such as sediment delivery and stream shading in Volume 1, Chapter 3 (pp. 369-418). The Fisheries section in Chapter 3 of the FEIS analyzes in detail the potential impacts from livestock grazing, road and thinning-related sediment delivery, and the width of the Riparian Reserve as well as shade on ESA listed species and other fish species. Chapter 4 of the PRMP/FEIS in Volume 2 describes the coordination and consultation process with both the USFW and NMFS (pp. 1041-1051). There are also Responses to Comments in Appendix W (Vol. 4) specifically addressing Fisheries (pp. 1908-1913).

The PRMP/FEIS analyzed delivery of sediment to fish-bearing and non-fish-bearing streams for all alternatives in Issue 2 (p. 297). That analysis demonstrates that sediment production from road construction and [logging] operation would increase by less than 1 percent under all alternatives and the Proposed RMP, and the effects to fish would not differ by alternative. These effects to fish would be short-term and localized and could result from increases in turbidity or deposition of fines in the stream channel substrates affecting habitat in the short term (Key Point, p. 277). Additionally, through consultation with the NMFS, the PRMP/FEIS incorporates numerous protections for the species and their habitat into the objectives and management direction for both Riparian Reserve and Fisheries (Appendix B).

In regards to livestock grazing and sediment production to fish-bearing and non-fish-bearing streams, it too was analyzed in Issue 2 (p. 297). Under all of the alternatives and the Proposed RMP, the effect on stream sediment from livestock grazing would remain the same or decrease. At the scale of the planning area, there would be no discernable difference among any of the alternatives or the Proposed RMP in the effects to fish from livestock grazing (p. 299). Thus, the analysis at the plan level, need not specifically examine the Coho salmon on the Medford District.

There is more information specific to the shortnose sucker in the “Issues Considered But Not Analyzed in Detail” section of Fisheries. The PRMP/FEIS states that shortnose sucker on the Klamath Falls Field Office were not analyzed in detail because there would be no measurable difference in effects under the alternatives or the Proposed RMP (p. 302). The PRMP/FEIS goes

on to say that four grazing allotments in the Klamath Falls Field Office are adjacent to streams or a reservoir designated as critical habitat for the shortnose sucker. Together these four allotments comprise 7.5 stream miles and 147.1 acres of critical habitat for shortnose sucker in reservoirs (p 303; Figure I-11, p. 1344). Water Quality is not being met on three allotments, with summer stream temperature exceeding state standards. However, the causal mechanism for elevated water temperature is regulation of the upstream Gerber Reservoir, over which the BLM has no control. Grazing practices specifically are not considered a factor in the non-attainment of the standard (USDI FWS 2013) (p. 303).

Further analysis of specific fish populations such as the Huntley Park Coho salmon population on the Medford District is beyond the scope of this regional planning effort. Analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions.

The Protester states that the BLM failed to take a hard look at the adverse consequences of thinning in the Riparian Reserve. However, under the Proposed RMP, less than 0.5 percent of all perennial and fish-bearing stream reaches in the decision area would be susceptible to shade reductions that could affect stream temperature if the BLM applies thinning in the outer zone of the Riparian Reserve based on current conditions (PRMP/FEIS, p. 277). This percentage is based on the assumption that all acres available for thinning along susceptible streams would be thinned; however, some might never be thinned. There would be no change in stream shading if the BLM were to not thin stands in the outer portions of the Riparian Reserve in these susceptible areas (PRMP/FEIS, p. 1920).

In the PRMP/FEIS the BLM has stated specific and detailed objectives for Riparian Reserve land use allocations in the Management Objectives and Direction section of Appendix B that vary for different geographic areas of the planning area (e.g., West of Highway 97), moist versus dry zones, by water feature (e.g., fish-bearing streams, lakes, unstable areas, etc.), and Class I-III sub-watersheds (Appendix B). There are specific management directions regarding where and under what circumstances to thin stands in Appendix B. Overriding the specific directions are the main management objectives for each area that states the BLM will contribute to the conservation and recovery of ESA-listed fish species and their habitats and provide for conservation of Bureau Special Status fish and other Bureau Special Status riparian-associated species as well as to provide for healthy riparian and aquatic conditions for a number of categories (pp. 1104, 1117, 1122). Also, BLM in the Monitoring section, BLM states it will continue to rely on the existing interagency effectiveness monitoring modules to address key questions about whether the RMP is effectively meeting its objectives including for riparian ecosystems (Appendix V, p 1807). Not only did the BLM take a hard look at thinning in Riparian Reserve, it has also set forth objectives, direction, and monitoring in the PRMP/FEIS.

The PRMP/FEIS analyzed shade along streams in depth in the Hydrology section (Volume 1, Chapter 3, pp. 369-418), where specifically in Issue 1 the BLM examined to what extent would each alternative maintain effective shade along each side of perennial and fish-bearing streams on BLM-administered lands. The Fisheries section then used the Hydrology shade analysis in Issue 3 to analyze how the alternatives vary in maintaining stream temperatures for fish-bearing and non-fish-bearing streams (PRMP/FEIS p. 300). A further explanation is provided in the

Response to Comments in Appendix W (p. 1920), which summarizes from the Hydrology section. After in-depth analysis, the BLM concluded that even under the most conservative scenarios, it is unlikely that any susceptible areas to shade loss would potentially result in stream temperature increases (p. 1920).

In conclusion, for all the reasons stated above, the BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to Fisheries in the PRMP/FEIS.

NEPA – Effects Analysis – Cumulative Effects

Issue Number: PP-OR-RMPforWOr-16-07-2

Organization: Individual

Protester: Byron Rendar

Issue Excerpt Text: Ignoring the cumulative effects of more logging and cutting closer to streams

Issue Number: PP-OR-RMPforWOr-16-11-28

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The failure of BLM to conduct a meaningful cumulative impacts of the Proposed Action is most evident in their approach to hydrologic modeling and the impact analysis related to reduction in riparian and watershed provisions of the ACS in particular weaker or non-existent management direction and controls and reductions in small intermittent stream riparian protection standards, as stated in the Coast Range Comments to the BLM RMP/EIS.

Issue Number: PP-OR-RMPforWOr-16-11-30

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Does not count past, present and ongoing (reasonably foreseeable future) BLM actions as causing significant

degradation when added to the impacts of other non-federal actions in the same cumulative impact area or watersheds, as NEPA cumulative impacts assessment requires. The definition of cumulative impacts in NEPA as shown above includes all relevant impacts, past present and future, regardless of actors. Finally, g) the cumulative impacts analysis in the RMPEIS ignores the significant interactions of current and ongoing climate impacts and current and ongoing land and water management impacts, including pervasive habitat, water quality, and fundamental physical and ecological processes.

Issue Number: PP-OR-RMPforWOr-16-12-14

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Because the unraveling of the Northwest Forest Plan as a consequence of the FEIS/PRMP is a foreseeable effect of the proposed action, the environmental and cumulative impacts of losing or changing the Northwest Forest Plan on both the BLM and other land owners (federal and non-federal) must be explicitly and fully addressed. As they were not addressed, the FEIS violates the National Environmental Policy Act.

Issue Number: PP-OR-RMPforWOr-16-12-54

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 118, FEIS/PRMP at 1896, BLM asserts that watersheds will be adequately maintained in the face of climate change

(and likely increased storm intensity) even after riparian reserves have been cut in half. This is not supported by the evidence, and indeed BLM sites nothing for this proposition. The EIS does not take a hard look at the effects of reduced stream protection and loss of watershed integrity in the face of increase climate stress and fails to take a hard look the cumulative effects of both climate change and reduced stream buffers.

Issue Number: PP-OR-RMPforWOr-16-12-75

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS limited cumulative effects analysis to projections about increased peak flows due to forest clearing in the transient snow zone. While peak flow analysis is necessary, this is not adequate to detect watershed scale degradation due to excessive road building and clear-cutting on mixed ownership lands. Watersheds with sensitive decomposed granitic soils are especially vulnerable to cumulative sediment impacts.

Summary:

The BLM violated NEPA by failing to disclose cumulative impacts, specifically related to:

- hydrology related to timber harvest and road construction;
- climate change;
- aquatic resources;
- timber harvest in the Harvest Land Base and in the Riparian Reserve; and
- implementation of the Northwest Forest Plan.

Response:

The BLM has adequately analyzed the potential cumulative impacts of the proposed action and the alternatives, and has adequately described those impacts. A cumulative impact is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 CFR 1508.7). The cumulative effects discussion must provide a useful analysis of the cumulative impacts and requires some quantified or detailed information, but not necessarily a formulaic recitation of a list of projects (*Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938, 954 (9th Cir. 2008); *KS Wild v. BLM*, 387 F.3d 989, 993-94 (9th Cir. 2004)). The cumulative impacts analysis cannot be merely conclusory (*Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988)). The agency must be able to make a convincing case for its finding (*Coalition on Sensible Transp. v. Dole*, 826 F.2d 60, 66-67 (D.C. Cir. 1987)). General statements about “possible effects” and “some risk” do not amount to a hard look without a justification why more detailed information could not be provided (*Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dept. of the Interior*, 608 F.3d 592, 604 (9th Cir. 2010) (citing *Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2005))).

The BLM has described all reasonably foreseeable future projects that are relevant to the decision being made. The NEPA documents are to be analytic, rather than encyclopedic (40 CFR

1500.4(b) and 1502.2(a)). Reasonably foreseeable actions are those that are sufficiently likely to occur that a prudent decision maker would take them into account when making a decision (43 CFR 46.30). Reasonably foreseeable actions include those for which there are existing decisions, funding, or proposals, but do not include those that are highly speculative or indefinite (*Id.*; *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1123 (9th Cir. 2002)).

The BLM addresses cumulative impact analysis in the PRMP/FEIS (pp. 119-122) and incorporates that analysis into each resource section in Chapter 3. The Resource Management Plans for Western Oregon Planning Criteria state the BLM's approach to cumulative effects analysis, "...the existing baseline information is a cumulative result of all past actions; therefore, it is not necessary to analyze past actions individually. For BLM-administered lands, the analysis will assume that the BLM will implement the specific actions described under the various alternatives, and will take the actions necessary to achieve the objectives described for the various alternatives. For lands other than BLM-administered lands within the analysis area, the analysis will assume that landowners will continue current management strategies, unless the BLM has specific information to the contrary" (USDI BLM 2014, p. 2).

The BLM described the cumulative effects analysis for all resources in Chapter 3 of the PRMP/FEIS. The BLM analyzes alternatives in an RMP/EIS based on effects that are reasonably foreseeable (40 CFR 1508.8(b)) and assumes that implementation of actions in compliance with an approved RMP are reasonably foreseeable future actions (PRMP/FEIS, p. 1866). Reasonably foreseeable future actions considered in this planning effort include the U.S. Forest Service revision of the Okanagan-Wenatchee Forest Plans and the Oregon, Mormon Pioneer, California, and Pony Express National Historic Trails Feasibility Study Revision (PRMP/FEIS, pp. 120-122). The Jordan Cove Energy and Pacific Connector Pipeline Project, which the BLM had identified in the Draft RMP/EIS as a reasonably foreseeable future action, is no longer reasonably foreseeable, as discussed in the PRMP/FEIS (p. 122).

On page 119 of the PRMP/FEIS, the BLM explains that, due to the nature of the analysis in this large-scale and long-term planning effort, all environmental effects described in this PRMP/FEIS would have incremental impacts that would have a cumulative effect together with past actions, other present actions, and reasonably foreseeable actions. The discussion of effects on each resource incorporates the effects of past actions, and describes other present actions and reasonably foreseeable actions to provide context where the incremental effects are examined, thus revealing the cumulative effects of the alternatives and the PRMP. The BLM integrated the effects of present actions on other ownerships into the broader analysis of current condition and assumptions about continued management consistent with existing plans or current trends.

For BLM-administered lands, reasonably foreseeable future actions are those actions that would occur as described under the various alternatives and the PRMP. For other ownerships within the planning area, reasonably foreseeable actions are those actions that would occur with the continuation of present management, also from a broad-scale perspective. It would be speculative for the BLM to presume knowledge of site-specific actions that would occur in the future on lands managed by others over the time period analyzed in the PRMP/FEIS. The BLM based these assumptions about future management on other ownerships on existing plans or current trends, and these assumptions are broad and general in nature. However, the broad

assumptions are sufficient to provide context for evaluating the incremental effect of the alternatives. The BLM also discussed cumulative effects analysis in Appendix W of the PRMP/FEIS:

The Draft RMP/EIS clearly states that this RMP revision would replace the 1995 RMPs and thereby replace the Northwest Forest Plan for the management of BLM-administered lands in western Oregon (USDI BLM 2015, p. 21). The analysis in the Draft RMP/EIS assumed that the U.S. Forest Service would continue to manage their lands within the analysis area consistent with their existing plans (i.e., the Northwest Forest Plan) (USDI BLM 2015, pp. 95–96). Thus, the analysis in the Draft RMP/EIS presents a cumulative analysis of the BLM management of BLM-administered lands under each alternative and the U.S. Forest Service management of National Forests under the Northwest Forest Plan (PRMP/FEIS, p. 1851, #17).

The discussion of effects on each resource incorporates the effects of past actions, and describes other present actions and reasonably foreseeable actions to provide context in which the BLM examined incremental effects, thus revealing the cumulative effects of the alternatives (USDI BLM 2015, pp. 93–94). The effects of the RMP on any resource are generally indirect effects that arise from the implementation actions that the BLM would conduct in conformance with the RMP. The analysis of effects in the Draft RMP/EIS does not address the effects of any specific, individual future implementation action, but the cumulative effects of implementation of entire programs of actions (i.e., a collection of reasonably foreseeable future actions) under each alternative. The analysis addresses the cumulative effect of implementing a combination of multiple programs under each alternative. The analysis summarizes the effects of past actions in creating the current condition and trend of resources, as explained in the Draft RMP/EIS. The analysis incorporates the effects of reasonably foreseeable future actions by others, as explained in the Draft RMP/EIS. For specific issues, the analysis in the Draft RMP/EIS then evaluated how these effects combined to form analytical conclusions about the cumulative effects (PRMP/FEIS, p.1869-1870, #52).

The Draft RMP/EIS analyzed the effects of wildfires only to the extent that wildfire would have a cumulative effect together with the effects of the alternatives. Wildfire is not an effect of the BLM action. The Draft RMP/EIS displayed the expected change in emissions from prescribed fire and wildfire in combination (USDI BLM 2015, pp. 118, 120). The Draft RMP/EIS analyzed smoke from wildfires not as an effect of the alternatives, but as a reasonably foreseeable occurrence as part of the cumulative effects analysis to provide context” (PRMP/FEIS, p. 1873, #58).

Cumulative effects analysis of greenhouse gas levels is challenging, in part, because of the difficulty in setting the geographic scope for the analysis. The Draft RMP/EIS placed BLM greenhouse gas emissions from harvest operations and prescribed burning into context with emissions from harvest operations and prescribed burning of other forest managers in western Oregon. The cumulative effects analysis of greenhouse gas emissions in the Draft RMP/EIS presented the incremental effect of the alternatives within the context of cumulative greenhouse gas emission at multiple spatial scales, including state and national total emissions (USDI BLM 2015, pp. 139–140). The PRMP/FEIS added discussion of how the proportion of BLM greenhouse gas emissions might change relative to other forest managers (see the Climate

Change section of Chapter 3). The commenter provided no indication as to what industries they consider as “similarly scaled” to BLM land management in western Oregon or how placing the BLM emissions in a different context would improve the quality of the analysis or provide for a reasoned choice among alternatives (PRMP/FEIS, p. 1887-1888, #94).

The Draft RMP/EIS cited relevant literature on the effects of climate change on wildfire, sufficient to understand the potential cumulative effect of climate change and future wildfires together with the effects of the alternatives (USDI BLM 2015, pp. 148–149, 155–156); (PRMP/FEIS, p. 1891, #104).

The Draft RMP/EIS analyzed the effect of timber harvest under the alternatives on stream temperature (USDI BLM 2015, pp. 286–297) and acknowledged the potential future effect of climate change on stream temperatures (USDI BLM 2015, pp. 149–150). As explained in response to a similar comment below under Hydrology, the current state of scientific knowledge does not render it possible to forecast quantitatively how future riparian forest stand development would interact with increasing annual and seasonal air temperatures to affect stream temperature. The Draft RMP/EIS acknowledged that timber harvest creates greenhouse gas emissions, and that greenhouse gas emissions contribute to climate change (USDI BLM 2015, pp. 136–139, 141–142). However, it is not possible to ascribe any specific change in climate conditions to a specific emission of greenhouse gases. Furthermore, to the extent that past timber harvest in the decision area has contributed to changing climate conditions, the description in the Draft RMP/EIS of current condition and trend of climate conditions incorporates the effects of past timber harvests. As explained in the Draft RMP/EIS, the analysis generally relies on an aggregate description of the current condition and trend of resources, rather than delving into the historical details of individual past actions (USDI BLM 2015, p. 94); (PRMP/FEIS, p. 1897, #119). Nor does the PRMP/FEIS attempt to speculatively assign any causal connection between those actions and current conditions.

The PRMP/FEIS has added discussion explaining that the effects on low water flows are an issue that the BLM considered but did not analyze in detail. Given the no-harvest Riparian Reserve along streams and the limited extent of the Harvest Land Base under all alternatives, there is no reasonably foreseeable effect of harvesting outside of Riparian Reserve on low water flows (see the Hydrology section of Chapter 3). Given that none of the alternatives would have a reasonably foreseeable effect on low water flows, there is no need for an analysis of the cumulative effects of other action on low water flows (PRMP/FEIS, p. 1913, #163).

The BLM generally analyzed the effects of the alternatives on wildlife habitat and wildlife species at both the decision area scale (BLM-administered lands only) and at the planning area scale (all ownerships). The BLM analyzed the effects at both the decision area and planning area scales to evaluate the cumulative effects on wildlife species within the geographic scope of the effects of the alternatives and the Proposed RMP. For some wildlife species, data was not available across the entire planning area, so the analysis in the Proposed RMP/Final was limited to the decision area (PRMP/FEIS, p. 1968, #302).

The analysis considers the cumulative effect of past actions in producing the current baseline condition for resources (USDI BLM 2015, p. 94), including northern spotted owl populations (PRMP/FEIS, p. 1984, #342).

The BLM evaluated the contribution of private lands to northern spotted owl recovery because they affect all management outcomes. As the BLM analyses verify, the private lands contribute relatively little to northern spotted owl conservation, and that affects how the cumulative effect of how the alternatives would contribute to northern spotted owl conservation and recovery (PRMP/FEIS, p. 1988, #353).

In conclusion, the information above shows that the BLM adequately analyzed cumulative effects in the Western Oregon PRMP/FEIS, thus complying with NEPA by disclosing cumulative impacts.

NEPA – Effects Analysis – Climate Change & Carbon Sequestration – Carbon, Forests & Timber

Issue Number: PP-OR-RMPforWOr-16-22-1

Organization: Individual

Protester: Kate Gessert

Issue Excerpt Text: Climate change is discussed, but not taken into account in the RMP, which would result in more cutting, meaning more carbon emissions and less carbon sequestration, and lead to faster and more severe climate change.

Issue Number: PP-OR-RMPforWOr-16-03-3

Organization: Rogue Valley Audubon Society

Protester: Linda Kreisman

Issue Excerpt Text: The RMP fails to acknowledge or address the role older forests play both in carbon storage and in mitigating the effects of climate change.

Issue Number: PP-OR-RMPforWOr-16-11-31

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: Gives no reasoned basis for its claims that climate change and carbon storage were meaningfully considered or evaluated.

Issue Number: PP-OR-RMPforWOr-16-11-32

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The sections in bold above show that the BLM cannot avoid its responsibilities under NEPA to examine climate impacts and contributions of greenhouse gases of its plan level actions.

Issue Number: PP-OR-RMPforWOr-16-11-33

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: BLM must take a harder look at climate impacts of each of the alternatives. The comments provided by numerous commenters included a strong message that the BLM's climate change analysis of the alternatives presented in the RMPEIS is inadequate.

Issue Number: PP-OR-RMPforWOr-16-11-34

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: It is hard to interpret the above, particularly the bolded statements, as demonstrating that the BLM

has no obligation to fully examine climate change impacts under existing law or policy.

Issue Number: PP-OR-RMPforWOr-16-12-34

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to public comments showing that managing BLM lands for carbon storage and climate mitigation would not only be consistent with BLM's existing legal mandates, but that BLM's failure to manage for carbon storage would violate BLM's legal duties, including but not limited to...

Issue Number: PP-OR-RMPforWOr-16-12-32

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM has not fulfilled "Executive Order 13653, issued on November 6, 2013, which directs the federal agencies to develop or modify programs and policies to promote '...greater climate resilience and carbon sequestration, or other reductions to the sources of climate change.'" In response, DOI updated its climate adaptation plan in 2014. The only specific direction with respect to carbon storage or carbon sequestration is to consider developing a formal policy for DOI bureaus to incorporate carbon storage as an explicit element of resource management plans (DOI Climate Change Adaptation Plan, p. 43)." See RTC 95, FEIS/PRMP at 1888 (emphasis added).

Issue Number: PP-OR-RMPforWOr-16-12-39

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM fails to take a hard look at forest conservation as a climate solution. The EIS under-estimates the value of forest conservation and the under-estimates the adverse effects of logging with respect to mitigating climate change.

Issue Number: PP-OR-RMPforWOr-16-12-40

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to respond to the public comment stating "The DEIS does not explain how BLM arrived at the conclusions presented in Figure 3-24, the pie chart showing that fire emits more carbon than "harvest operations." The DEIS does not say what kinds of emissions are included in harvest operations. Is it just the fuel used for machinery and transport? Does it include carbon removed from the forest via logging and slash fires? Does it account of the decay of wood products removed from the forest in current and prior years?"

Issue Number: PP-OR-RMPforWOr-16-12-42

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM is making the mistake of comparing carbon "before and after" logging instead of the more accurate, "with and without" the project. Our comments implored BLM to avoid "before-and-after" carbon accounting. BLM cannot say that logging is carbon neutral because the forest is capturing more carbon than is being removed across the landscape. This is highly misleading. The proper analysis requires comparison of the amount

of carbon with logging under the PRMP and without logging. A no-logging alternative will allow more forests to regrow and capture more carbon. Logging represents a forgone opportunity to store carbon in the forest and thus represents harm to the climate. An analysis like this is not only required to accurately determine the effect of vegetation removal on forest carbon storage but it is also consistent with NEPA requirements to compare action and no action alternatives.

Issue Number: PP-OR-RMPforWOr-16-12-44

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM fails to fully recognize the climate benefits of an alternative that focuses on thinning young stands and conserving older stands. A

Summary:

The BLM's current analyses of climate change impacts in the Western Oregon PRMP/FEIS are inadequate. The BLM did not fully analyze potential contributions of its proposed actions to GHG emissions in the Western Oregon PRMP/FEIS, nor did it meaningfully analyze ways to store carbon. The BLM does not adequately consider the relationship between carbon and forest resource management, including forest stand composition and forest topography. The BLM must take a "harder look" at climate impacts under each alternative in the Western Oregon PRMP/FEIS.

Response:

The BLM has various climate-related policies, including the following:

- Executive Order 13514, which directs agencies to measure, manage, and reduce greenhouse gas emissions toward agency-defined targets for agency actions such as vehicle fleet and building management;
- Executive Order 13653, which directs agencies to assess climate change related impacts on and risks to the agency's ability to accomplish its missions, operations, and programs and consider the need to improve climate adaptation and resilience;
- Secretarial Order 3226, which requires that the BLM "consider[s] and analyze[s] potential climate change impacts when undertaking long-range planning exercises...developing multi-year management plans, and making major decisions regarding potential use of resources";

reasoned choice among alternatives requires BLM to make a distinction between the greater harm of logging older forests and the relative lesser climate impacts of thinning young forests.

Issue Number: PP-OR-RMPforWOr-16-12-45

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM failed to recognize that forests on lower slopes tend to be higher productivity, more resilient to disturbance, so they make great places to store carbon. A reasoned choice among alternatives requires BLM to accurately display the carbon and climate consequences of shrinking riparian reserves and increasing logging near streams.

- Secretarial Order 3289, which establishes a Department of the Interior approach for applying scientific tools to increase understanding of climate change and to coordinate an effective response to its impacts; and
- Departmental Manual 523 DM 1, which directs the Department of the Interior agencies to integrate climate change adaptation strategies into programs, plans, and operations.

These policies address topics related to greenhouse gas emissions and climate change, but none directs the BLM to manage BLM-administered lands specifically for carbon storage. This PRMP/FEIS is consistent with these policies to the extent they address topics within the scope of this planning effort.

The BLM took the requisite “hard look” at the environmental effects of the alternatives in the PRMP/FEIS. The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences) (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). The agency may not rely on incorrect assumptions or data when analyzing effects (*Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005)). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action's environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat'l Parks and Conservation Ass'n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982))

The PRMP/FEIS analyzed the effects of the alternatives on carbon storage and greenhouse gas (GHG) emissions, assessed climate change-related impacts, and considered potential effects of the alternatives in adapting to climate change.

- Carbon Storage: The Draft RMP/EIS analysis demonstrates that the No Timber Harvest reference analysis represents the management approach that would maximize carbon storage (USDI BLM 2016, pp. 103-4; 165–173), which is not a reasonable alternative. Specifically, a purpose of maximizing carbon storage would conflict with the purpose of providing a sustained yield of timber, which is an explicit legal mandate for the BLM from the O&C Act. The PRMP/FEIS demonstrates that it would not be possible for the BLM to design alternatives specifically to “address climate change.” The BLM can only address potential effects of the alternatives in adapting to climate change in general, qualitative terms, because of the uncertainties associated with projecting future climate change, and the uncertainties associated with the interaction of future climate change and land management approaches (USDI BLM 2016, pp. 165–169; see also Appendix G pp. 1837-1838).
- In the Socioeconomics section (USDI BLM 2016, pp. 598-600), the BLM calculated the annual amount and value of net carbon storage based on the information presented in the Climate Change section. To estimate value, the analysis used values developed by the U.S. Interagency Working Group (IWG) on Social Cost of Carbon (SCC). The BLM clearly and openly acknowledges the uncertainties and limitations associated with these estimates in the PRMP/FEIS, including in Response to Comments (Appendix W, pp. 1948-1949).

- GHG: The BLM estimated greenhouse gas emissions and carbon storage for each alternative using projected timber harvest, permitted levels of grazing, and prescribed burning (PRMP/FEIS, pp. 173-180). The PRMP/FEIS also considered potential effects of the alternatives in adapting to climate change (pp. 180-202).

In conclusion, for the reasons described above, the BLM has taken the requisite “hard look” at the impact on greenhouse gases and climate change of the Western Oregon PRMP/FEIS. The BLM has provided a thorough analysis of carbon sequestration, greenhouse gas emitted, and effects on other resources. Although no policy directs the BLM to manage BLM-administered lands specifically for carbon storage, the BLM estimated carbon storage for each alternative and calculated the annual amount and value of net carbon storage using best available information from high quality, peer-reviewed science. The PRMP/FEIS is consistent with all climate change rules, laws, and policies to the extent they address topics within the scope of this planning effort. Further analysis regarding the effect of the action would be beyond the scope of the impacts and is not necessary to make a reasoned choice between the alternatives.

NEPA – Effects Analysis – Climate Change & Carbon Sequestration – Social Cost of Carbon

Issue Number: PP-OR-RMPforWOr-16-12-136

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM refuses to reconsider its erroneous conclusion that alternatives with more timber harvest result in relatively greater economic benefits. BLM fails to integrate all the economic considerations, such as the fact that more logging means more economic volatility and more carbon emissions with greater social cost of carbon.

Issue Number: PP-OR-RMPforWOr-16-12-138

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s actions in this regard are arbitrary and capricious in light of all the evidence.

Issue Number: PP-OR-RMPforWOr-16-12-51

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s analysis of environmental justice refused to recognize that its decision to forego opportunities to

store more carbon represents an increase in the adverse effects of climate change and that these effects will fall disproportionately [sic] on the poor and disadvantaged and will extend far beyond the counties in the planning area.

Issue Number: PP-OR-RMPforWOr-16-12-49

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to consider more accurate estimates of the social cost of carbon dioxide emissions. The Response to Comment said, “The value reflects the latest Federal estimates of the social cost of carbon, using the guidance and methods outlined by the Council on Environmental Quality.” The Response to Comment said “BLM believes using the current (2015) social cost of carbon estimates in the Proposed RMP/Final EIS is justified, because more comprehensive, peer-reviewed estimates are not available.” NEPA does not allow BLM to limit its analysis that way. BLM failed to respond to detailed comments about various criticisms of the official cost estimates. Several important costs are left out of the official estimates, so higher values make more sense. BLM failed to fulfill its duty to disclose and consider opposing viewpoints.

Summary and Response:

See summary and response to the same comments under NEPA > Effects Analysis > Socioeconomics.

NEPA – Effects Analysis – Riparian Reserves

Issue Number: PP-OR-RMPforWOr-16-12-53

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Stream shading is but one function provided by riparian reserves. BLM has a duty to disclose the important functions that are lost when the purpose of riparian reserves is narrowed to exclusively aquatic when the current Northwest Forest Plan adopted wider buffers based on a combination of aquatic AND terrestrial purposes.

Issue Number: PP-OR-RMPforWOr-16-12-54

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 118, FEIS/PRMP at 1896, BLM asserts that watersheds will be adequately maintained in the face of climate change (and likely increased storm intensity) even after riparian reserves have been cut in half. This is not supported by the evidence, and indeed BLM sites nothing for this proposition. The EIS does not take a hard look at the effects of reduced stream protection and loss of watershed integrity in the face of increase climate stress and fails to take a hard look the cumulative effects of both climate change and reduced stream buffers.

Issue Number: PP-OR-RMPforWOr-16-12-56

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to take a hard look at the adverse effects of shrinking riparian reserves and increasing discretion to log near streams...There are two main problems with the FEIS/PRMP decision to reduce streams buffers. First, the spatial extent of the buffers is reduced without any compelling justification, and second, the standards & guidelines governing activities in the buffers are weakened which will allow many activities to degrade conditions that require careful conservation.

Issue Number: PP-OR-RMPforWOr-16-12-80

Organization: Earthjustice

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS is wrong to limit management standards in riparian reserves to only provide for shade and large wood. Limiting considerations for riparian reserves to potential wood inputs and shade arbitrarily compromises the stated purpose and need for recovery of [all] ESA listed species and clean water from watersheds. The purported 2 parameters for riparian reserves (wood and shade) do not fully meet the needs of ESA listed fishes because sediment filtering, nutrient filtering and durability in the face off floods, fires, and windstorms are ignored, ostensibly because they are difficult to model.

Summary:

The protesters assert that the BLM violated NEPA by failing to adequately analyze and disclose impacts of Riparian Reserve management strategies on terrestrial resources and watersheds given climate change in the Western Oregon PRMP/FEIS. Specifically, the riparian reserve buffers have been reduced and the Standards and Guides for those buffers have been weakened.

Additionally, the protesters assert that the BLM violated NEPA by not meeting the purpose and need of the proposed action to contribute to the conservation and recovery of listed fish species, violated ESA by failing to contribute to the recovery of listed species, and violated the Clean Water Act (CWA) by failing to provide for clean water because the BLM only used shade and large wood as analysis indicators.

Response:

The BLM has disclosed in the Western Oregon PRMP/FEIS the relevant and applicable information available to the agency. The BLM took the requisite “hard look” at the environmental effects of the alternatives in the PRMP/FEIS. The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences). (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The agency must consider and disclose the environmental impact of its actions, which includes identifying the relevant information to consider (*Baltimore Gas & Elec. Co. v NRDC*, 462 U.S. 87, 97-98 (1983)). If information or an issue is not relevant (“significant to the action in question”) it is not necessary to include it in the NEPA document (40 CFR 1500.1(b)).

The BLM has complied with the NEPA by analyzing the effects of eight alternatives with various Riparian Reserve strategies on resources in the analysis area. The BLM summarized six scenarios for Riparian Reserve management in eight alternatives: No Action, Proposed RMP, two sub-alternatives and four action alternatives (PRMP/FEIS, pp. 36, 109).

One of the objectives of the NEPA is to provide analysis to allow for a reasoned choice among the alternatives. The BLM accomplished this by analyzing and disclosing the effects of each alternative in the PRMP/FEIS for various resources, including terrestrial resources and varying riparian strategies. For example, the BLM analyzed the effects of the alternatives on ESA-listed fish, water quality, rare plants and fungi, recreation, soils and wildlife species (PRMP/FEIS, pp. 277-301, 369-418, 517-554, 555-584, 745-768, 825-1018). The analysis demonstrates the comparative effect of the alternatives and allows for a reasoned choice among the alternatives. The BLM analyzed the effects of alternatives on hydrology (PRMP/FEIS, pp. 369-418) and climate change (PRMP/FEIS, pp. 165-211), including cumulative effects. The analysis was not limited to two factors (shade and large wood) as the protester asserts. The BLM provided detailed analysis on the significant issues including stream shade (PRMP/FEIS, pp. 369-384), peak flow (PRMP/FEIS, pp. 384-394), risk of landslides (PRMP/FEIS, pp. 304-400), and fine sediment delivery (PRMP/FEIS, pp. 401-408). The BLM analyzed the potential effects of

climate change on natural resources, including streamflow and temperature (PRMP/FEIS, pp. 189-190, 198). The BLM stated in the PRMP/FEIS (Appendix W, p. 1845) that:

[Consistent with the purpose and need for this RMP revision, the BLM established management objectives for the Riparian Reserve in the action alternatives and the Proposed RMP that focused on fish habitat and water quality. This is in contrast to the nine, broad objectives of the Aquatic Conservation Strategy of the Northwest Forest Plan, which included supporting well-distributed populations of riparian-dependent species, based on the U.S. Forest Service's organic statute and implementing regulation. For this RMP revision, the BLM adopted a purpose and need that is consistent with the agency's discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes. The BLM based the management objectives for the Riparian Reserve in the action alternatives and the Proposed RMP on this purpose and need.

Although the management objectives for the Riparian Reserve in the action alternatives and Proposed RMP do not explicitly include the nine Aquatic Conservation Strategy objectives as presented in the Northwest Forest Plan, the Proposed RMP does contain comparable management objectives and management direction as summarized above. Furthermore, the discussion in the Draft RMP/EIS analyzed the effect of the different Riparian Reserve strategies on the resources associated with the nine Aquatic Conservation Strategy objectives. The commenter mistakenly asserts that the analysis did not address the effect of the different Riparian Reserve strategies on non-aquatic species. The different Riparian Reserve strategies and different analytical assumptions related to Riparian Reserve management were all included in the vegetation modeling, which in turn informed the analysis of effects on all species, including the northern spotted owl, Marbled Murrelet, and fisher (USDI BLM 2015, pp. 100–102, 987–1043). These disclosures of terrestrial species effects presented a reasoned analysis based on detailed, quantitative information, including the effects of past actions and reasonably foreseeable future actions, and thus provided a 'hard look' at the effects of the alternatives, including changes in Riparian Reserve design.]

The management objectives and management direction of the PRMP provide a comparable overall management approach to resources, as summarized in the PRMP/FEIS, Appendix W, Table W-1.

Although the BLM could assess other factors to analyze the effects of the alternatives, the BLM limited the analysis to significant issues, which is consistent with CEQ 1500.1(b). Through internal and external scoping (PRMP/FEIS, pp. 1041-1051), the BLM identified shade and large wood as significant issues, among others. As stated above, the BLM did not limit the analysis to only two factors: shade and large wood. The Fisheries and Hydrology sections of the PRMP/FEIS include the BLM's focused analysis on the identified significant issues, including functional wood (PRM/FEIS, pp. 282-297), sediment delivery (PRMP/FEIS, pp. 297-300, 401-408), stream temperature (PRMP/FEIS, pp. 300-301), stream shade (PRMP/FEIS, pp. 369-384),

peak flows (PRMP/FEIS, pp. 384-394), landslide risk (PRMP/FEIS, pp. 394-400). Additionally, the BLM explains why other issues were dropped from detailed study (PRMP/FEIS, pp. 301-303, 408-415).

The BLM analyzed the effects to ESA-listed wildlife (PRMP/FEIS, pp. 853-861, 890-1009), fishes (277-305), and botanical species (517-548). The BLM worked cooperatively with regulatory agencies (PRMP/FEIS, pp. 1045-1049). The BLM will complete consultation with the regulatory agencies prior to issuing a Record of Decision (PRMP/FEIS, pp. 1049-1051). See also response in Section 6.0 – Clean Water Act.

The BLM complied with NEPA's requirement to analyze the environmental impacts to resources in the Riparian Reserve. The BLM adequately analyzed and disclosed the effects of the proposed actions in the Riparian Reserve allowing the BLM to make a reasoned choice among the alternatives. The PRMP meets the purpose and need and the BLM has complied with ESA by contributing to the recovery of listed species. BLM conducted an adequate analysis to make a reasoned choice among the alternatives.

NEPA – Supplemental EIS

Issue Number: PP-OR-RMPforWOr-16-11-20

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM has not evaluated the impacts of removing this critical roadless area prohibition. This failure alone requires the BLM to issue a new DRAFT supplemental EIS for public review of these impacts that have not been previously presented or explained.

Summary:

The BLM must, and failed to, prepare a Supplemental EIS with an opportunity for public review to address the impacts of removing protections from Lands with Wilderness Characteristics.

Response:

NEPA requires agencies to prepare Supplemental EIS's to either a Draft or Final EIS if the agency makes *substantial changes* to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). "Substantial changes" in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the Draft or Final EIS (BLM Handbook H-1790-1, p. 29). A Supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

The BLM has determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts. The BLM has made no substantial changes to the proposed plan relevant to environmental concerns in the PRMP/FEIS. The public had an opportunity to comment on the analysis assumptions for lands with wilderness characteristics. The Draft RMP/EIS stated that "where a portion of an area identified as having wilderness characteristics overlaps with the Harvest Land Base under a particular alternative, the effective sub-unit would have all inventoried acres eliminated from protection unless the remaining acreage is over 5,000 acres" (USDI 2015, p. 371). The BLM carried these criteria into the PRMP/FEIS at p. 470.

The removal of Wellington and Dakubetede from the District-Designated Reserve-Lands managed for their wilderness characteristics in the PRMP/FEIS is consistent with criteria included in the Draft RMP/EIS, which was available for public comment. As such, the removal of these lands from special designation does not constitute significant new information that warrants the preparation of a Supplemental EIS.

The PRMP/FEIS disclosed the anticipated impacts of removing protections from areas previously designated as Lands with Wilderness Characteristics. As stated in the PRMP/FEIS, Appendix W, because of the incompatibility between managing for wilderness characteristics

and sustained-yield timber harvest, removal of Harvest Land Base acres causes the Dakubetede and Wellington units to fall below the 5,000-acre minimum size threshold in the PRMP (PRMP/FEIS, p. 1936). The BLM considered the impacts of this action, stating that management actions would degrade wilderness characteristics over time, and, eventually, wilderness characteristics would be lost (PRMP/FEIS p. 470).

Additional analysis regarding removal of protections from the Wellington and Dakubetede lands with wilderness characteristics would not assist the BLM in making a reasoned choice between the alternatives; therefore, the BLM is not required to prepare a Supplemental EIS.

NEPA – Violation of the BLM NEPA Handbook

Issue Number: PP-OR-RMPforWOr-16-13-7

Organization: Klamath Siskiyou
Wildlands Center

Protester: Joseph Vaile

Issue Excerpt Text: The BLM NEPA Handbook explains that the BLM can

incorporate any such information by reference if the information is reasonably available for public inspection (USDI BLM 2008, p. 26). FEIS: 1910 The FEIS provided no URL to Reeves et al. (in press) and Forest Service research manuscripts 'in press' are not available to the public.

Summary:

The BLM is inconsistent with the NEPA handbook in the Western Oregon PRMP/FEIS because of the failure to provide information for public review.

Response:

The BLM has complied with the BLM's NEPA Handbook, which the BLM follows for compliance with the National Environmental Policy Act (NEPA) (BLM National Environmental Policy Act Handbook, H-1790-1 ("Handbook"), at ix). A handbook is guidance, and does not create a binding expression of agency interpretation of law (*Northern California River Watch v. Wilcox*, 633 F.3d 766, 779 (9th Cir. 2011) (and cases cited therein)). Documents may be incorporated by reference into a NEPA document when the incorporated document is reasonably available for inspection by the public during the comment period (40 CFR § 1502.21; Handbook at 26). 'Incorporation by reference' is a mechanism by which the incorporated document is made part of the NEPA document and includes a summary of the incorporated document (*Id.*) (*Knievel et al. v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)). By contrast, a document that is relied on for a particular statement or fact is simply referred to, without needing to be incorporated by reference (*Black's Law Dictionary* 662 (5th Pocket Ed. 2016)).

The BLM is not prohibited from using new information, including documents that are in press. To the contrary, NEPA requires that agencies (including the BLM) utilize information of high quality and based on accurate scientific analysis. The BLM did not incorporate by reference the Reeves et al. (In Press) document in the PRMP/FEIS; however, the PRMP/FEIS does refer to the document in several places (PRMP/FEIS, pp. 281, 284, 285). Such references are relied on by the BLM for the particular statements or facts within the cited reference (*Id.*). This document was included in the list of references in the PRMP/FEIS. pp. 304-305. The now-published paper by Reeves et al. is dated April 2016. The BLM sent the PRMP/FEIS to typesetting and print in March 2016 and was thus unable to provide a hyperlink in the PRMP/FEIS. It is now available online at http://www.fs.fed.us/pnw/pubs/pnw_gtr937.pdf. The BLM has complied with the BLM's NEPA Handbook in the preparation of the PRMP/FEIS.

NEPA – Segmentation of Analysis

Issue Number: PP-OR-RMPforWOr-16-13-30

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: Please note that the BLM is deferring transportation management planning and analysis of environmental and social effects to a hypothetical future NEPA planning process while preparing to authorize a certain and significant increase in the size and impacts of its road system in this planning process. NEPA does not permit such an approach.

Issue Number: PP-OR-RMPforWOr-16-46-1

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: BLM's failure to define how they would apply the term “existing roads and trails” with specific criteria continues and exacerbates the problem for both myself and hundreds of other area residents who are on record as requesting BLM to choose “appropriate places” for OHV activity. Because of BLM's failure to manage OHV activity, particularly in the Medford District, the use of the term “existing roads and trails” without defining

Summary:

The BLM violated NEPA in the Western Oregon PRMP/FEIS by deferring transportation management planning.

Response:

The BLM has complied with NEPA, and has not impermissibly segmented the NEPA process by deferring the Travel Management Planning process to a later time. Segmentation under NEPA occurs when agencies attempt to “evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without ‘significant environmental

criteria means that use of the multitude of user-created OHV trails would continue. Further, deference of any determination of which trails are acceptable until a Travel Management Plan is completed presents the likely potential that user created trails would increase.

Issue Number: PP-OR-RMPforWOr-16-12-172

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM must be sure to address these and other impacts through careful application of the minimization criteria on a route- by-route basis.

Issue Number: PP-OR-RMPforWOr-16-12-173

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Thus, it is unequivocally clear that the BLM cannot designate ORV areas or routes without applying the minimization criteria and documenting how it was applied for individual designations. The Proposed RMP fails to show how the minimization criteria were applied to the decision area.

impact” (*Delaware Riverkeeper Network et al. v. FERC*, 753 F.3d 1304, 1313-14 (D.C. Cir. 2014); (*Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985)). Actions are connected, and should be analyzed together when they are closely related and “(i) automatically trigger other actions which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; and (iii) are interdependent parts of a larger action and depend on the larger action for their justification” (40 CFR § 1505.25(a)(1)). Where projects have independent utility (each would take place with or without the other) the projects are not connected and may be analyzed separately (*Native Ecosystems Council et al. v. Dombeck*, 304 F.3d 886, 894 (9th Cir. 2002)).

Travel management planning may proceed independent of a land use planning effort. The PRMP/FEIS describes the current BLM policy that specifically addresses the decision to defer travel management planning. The BLM Travel and Transportation Management Manual-1626 outlines the BLM’s policies for travel and transportation management planning in the land use planning process consistent with 43 CFR 8342 (PRMP/FEIS, p. 776). The policy provides reasons for deferring the development of an implementation-level travel management plan, which includes the size and complexity of the area, controversy, or incomplete data (USDA BLM 2014, 06(B), PRMP/FEIS, p. 776). The PRMP/FEIS demonstrates that the BLM appropriately exercised the discretion to defer travel management planning due to the size of the planning area and the complexities associated with the checkerboard nature of BLM lands in western Oregon (*Id.*). This permitted process is not an evasion of NEPA, as travel management planning would still be subject to the NEPA process.

Additionally, the PRMP/FEIS includes specific information on how the BLM would implement travel management planning over the next five years (PRMP/FEIS, Appendix X, “Guidance for the Use of the Completed RMPs”, and Appendix Q, “Public Motorized Access Designation Guidelines”). The protestant’s concerns regarding the identification of limited to existing trails would be appropriately addressed as travel planning occurs. These types of decisions require site-specific planning and environmental (e.g., NEPA) analysis. The implementation-level travel management planning would be conducted using an interdisciplinary team approach (PRMP/FEIS, Appendix Q, p. 1605). A public outreach strategy to engage fully all interested stakeholders would be incorporated into future travel management plans (PRMP/FEIS, Appendix Q, p. 1607).

The protestant fails to demonstrate that the BLM’s decision to defer travel management planning is in error and in violation of current direction. The PRMP/FEIS clearly and concisely states BLM’s compliance with current policy and management direction regarding implementation-level travel management planning. The BLM has complied with NEPA, and has not impermissibly segmented the NEPA process by deferring the travel management planning process to a later time.

FLPMA – General

Issue Number: PP-OR-RMPforWOr-16-12-100

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: By eliminating survey and manage, BLM is neglecting its survey and inventory requirements under FLPMA. The survey requirement of survey and manage was designed to satisfy the BLM’s obligation under FLPMA:

The BLM is responsible for preparing and maintaining, on a continuing basis, a current inventory of the public land and its resources (FLPMA, 43 USC 1701 Sec.201 (a)). This inventory information, along with monitoring data collected under a variety of programs, shall be used to evaluate the current status and trends of plants and animals and their habitats on BLM-administered lands, and to respond to FWS

Summary:

The BLM violated FLPMA in the Western Oregon PRMP/FEIS by eliminating survey and manage.

Response:

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.”

Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values”.

Survey and Manage measures were included in the Northwest Forest Plan to respond to a goal of ensuring viable, well-distributed populations of all species associated with late-successional and old-growth forests. As explained in the PRMP/FEIS, this goal of the Northwest Forest Plan was founded on a U.S. Forest Service planning regulation, which does not apply to the BLM, and is not a part of the purpose for this PRMP (PRMP/FEIS, pp. 21–22). The BLM based the purpose

and/or NMFS Federal Register Notices of species status review (e.g., 90-day, 12-month, 5-year, and annual candidate reviews).

Issue Number: PP-OR-RMPforWOr-16-12-101

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s BSS policy requires “Monitoring populations of Bureau special status species to determine whether management objectives are being met. Records of monitoring activities are to be maintained and used to evaluate progress.” By dropping survey and manage BLM is eliminating surveys for many of these BSS and in turn violating its responsibilities under FLPMA to keep an active inventory of these species.

for this RMP revision on the statutes and regulations that apply to the BLM, as detailed in Chapter 1 (PRMP/FEIS, pp. 1-25). The BLM will not use the RMP revision process to adopt regulations like those that apply only to the U.S. Forest Service. The PRMP/FEIS explained that the BLM does not need the Survey and Manage measures to avoid species extinctions or to achieve the purposes of the RMP revision or to meet BLM's obligations under applicable law and regulation (PRMP/FEIS, p. 1848).

The Draft RMP/EIS explained that the BLM does not need the Survey and Manage measures to avoid species extinctions or to achieve the purposes of the RMP revision or to meet BLM's obligations under applicable law and regulation. The PRMP represents a management approach that provides habitat for species "associated with old-growth forest conditions" (PRMP/FEIS, p. 1848). This is achieved by maintaining a network of large blocks of forest to be managed for late-successional forests and maintaining older and more structurally-complex multi-layered conifer forests (PRMP/FEIS, p. 22).

The BLM has other management tools besides allocating reserves for conserving species that are associated with late-successional and old-growth forests. Although the species viability goal of the Northwest Forest Plan is not part of the purpose for this RMP revision, the BLM would provide management for Survey and Manage species that are also Bureau Sensitive species, consistent with BLM policy, under all action alternatives and the Proposed RMP. As detailed in the Rare Plants and Fungi and Wildlife sections of Chapter 3, Appendix N – Rare Plants and Fungi, and Appendix S – Other Wildlife (PRMP/FEIS, p. 1849).

The BLM Special Status Species policy directs that the BLM address Bureau Sensitive species and their habitats in the planning process, and, when appropriate, identify and resolve significant land use conflicts with Bureau Sensitive species. In implementing the RMP, the BLM will ensure that actions affecting Bureau Sensitive species will be carried out in a way that is consistent with the objectives for managing those species and their habitats at the appropriate spatial scale (PRMP/FEIS, p. 1849).

The BLM has addressed the Survey and Manage species that are also Bureau Sensitive species in the analysis for this RMP revision. Therefore, even if habitat and site protection were not sufficient to provide adequate habitat for such species, before they could need listing under the ESA, the BLM would be able to include such species on the BLM Sensitive species list and provide necessary additional management to avoid the need for listing (PRMP/FEIS, p. 1849).

Sec 201 of the FLMPA requires the Secretary of the Interior to prepare and maintain an inventory of public lands and its resource (PRMP/FEIS, p. 1091). The elimination of Survey and Manage does not eliminate the BLM's duty to survey and utilize internal databases such as GeoBob. The Management Direction listed in Appendix B, requires that the BLM, conduct inventories and surveys for cultural resources, ESA-listed, and Bureau Special Status species prior to the authorization of any project and to implement appropriate mitigations to reduce or eliminate potential effects to these resources (PRMP/FEIS, pp. 1138, 1141, 1146, 1154, 1155, 1156, 1158, 1159, 1160).

Contrary to the protestor's statement, the elimination of Survey and Manage does not cause a violation of law under FLMPA. The BLM will conduct inventories for ESA-listed and Bureau Special Status species prior to the authorization of any project and this data will be used to maintain active databases. For the reasons stated above the Protesting Parties argument is without merit and should be rejected.

FLPMA – Consistency with Local Plans

Issue Number: PP-OR-RMPforWOr-16-08-8

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The BLM overlooks that unique role that the Counties have as beneficiaries of the Settlers Clause as well as their roles under the FLPMA and the O & C Acts, the failure to respond to the comments violates FLPMA requirements that the BLM keep apprised of the local land use plans; assure consideration of local plans; assist in resolving inconsistencies; and, provide for meaningful public involvement of elected local officials. Further, it violates the requirements that the BLM plans be consistent with the plans and management programs of local governments to the extent possible. Under the provisions of 43 USC §1712(a)(9) and 43 CFR §1610.3-2, any FLPMA land use planning is required to be coordinated with and be consistent with the plans, policies and programs of the local governments.

Issue Number: PP-OR-RMPforWOr-16-30-3

Organization: Josephine County

Protester: M. Wally Hicks

Issue Excerpt Text: Unfortunately, all four of the RMP's proposed alternatives (4, B, C & D) fell well short of the requisite sustainable yield target. Thus, the entire RMP is inconsistent with Josephine County's Natural Resources Coordination Plan. By implication, this resulting PRMP is also inconsistent with the Coordination Plan.

Issue Number: PP-OR-RMPforWOr-16-05-1

Organization: Jackson County

Protester: Rick Dyer

Issue Excerpt Text: Jackson County is protesting the Proposed RMP/EIS on the grounds that the development of the RMP/EIS failed to comply with the coordination requirements of 43 USC § 1712(c)(9).

Issue Number: PP-OR-RMPforWOr-16-05-2

Organization: Jackson County

Protester: Rick Dyer

Issue Excerpt Text: The State Director was wrong in publishing the Proposed RMP/EIS because the process to develop the Proposed RMP/EIS failed to include BLM's statutory and regulatory obligation to coordinate with Jackson County in the development of the RMP/EIS.

Issue Number: PP-OR-RMPforWOr-16-30-2

Organization: Josephine County

Protester: M. Wally Hicks

Issue Excerpt Text: Additionally, BLM has at no point in the process of conceiving, drafting, and proposing the PRMP coordinated with Josephine County. The BLM has a legal responsibility to coordinate with local governments. To the extent practicable, the BLM must seek to maximize consistency with the plans and policies of other government entities. FLPMA, 43 USC 1712(c). In addition to the public involvement prescribed by 43 CFR I 610.2, the BLM must coordinate with local

governments and assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans. 43 CFR 1610.3-1 . Josephine County, unlike many counties, has not entered into a Cooperating Agency agreement with the BLM. Additionally, while Josephine County is a member of the Association of O&C Counties, we have not delegated that organization to make agreements on our behalf. Having a system of Cooperating Agency agreements does not relieve the BLM of its responsibility to coordinate with Josephine County, particularly since we are not a cooperating entity. In crafting this PRMP, the BLM has failed to coordinate with Josephine County. The BLM's process is therefore inconsistent with Federal law which renders the PRMP invalid.

Issue Number: PP-OR-RMPforWOr-16-30-4

Organization: Josephine County

Summary:

The requirements of FLPMA were violated because the BLM:

- failed to coordinate with local governments and be consistent with local plans, policies, and programs; and
- failed to achieve requisite sustained yield targets, which render the RMP revision inconsistent with local plans.

Response:

The BLM has met its obligations under the Federal Land Policy & Management Act (FLPMA) to coordinate its planning efforts with state and local governments and appropriately coordinated with the County under the Federal Land Management & Policy Act (FLPMA). Section 202(c)(9) of FLPMA directs BLM to coordinate its land use planning process with state and local governments. The BLM is required to coordinate land use planning with the land use planning and management programs of State and local governments, to the extent they are consistent with the laws governing the administration of public lands (43 USC § 1712(c)(9)). The BLM's planning regulations interpreting this statutory language state that RMPs "shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein" of State and local governments and Indian Tribes but only "so long as the guidance and resource management plans [of the State and local government and Tribe] are also

Protester: M. Wally Hicks

Issue Excerpt Text: Federal law requires the BLM to coordinate with the county, not the other way around. The BLM knew for months that the county wanted to meet and coordinate regarding the RMP, but the agency took no steps whatsoever in that direction.

Issue Number: PP-OR-RMPforWOr-16-30-5

Organization: Josephine County

Protester: M. Wally Hicks

Issue Excerpt Text: In summary, Josephine County objects to the PRMP for a variety of reasons, one of which is the BLM's failure to abide the coordination requirements of federal law. Therefore, the county seeks a renewal of the PRMP process.

consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands....” 43 CFR 1610.3-2(a). If no such officially approved or adopted plans exist, then an RMP shall “to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian Tribes” (43 CFR 1610.3-2(b)). Such consistency is only required if the BLM’s RMP would also be consistent with the policies, programs, and provisions of Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(b)). The BLM is required to offer other federal agencies with jurisdiction by law or special expertise an opportunity to be cooperating agencies under NEPA (40 CFR § 1501.6). State and local agencies with similar expertise may also be cooperating agencies, as may Tribes (*Id.* at §1508.5). To that end, the NEPA regulations direct agencies to the fullest extent possible to integrate the NEPA requirements with other planning processes. 40 CFR 1500.2(c). No requirement exists that requires coordination under FLPMA and cooperation under NEPA be conducted separately.

In accordance with these requirements, the BLM has given consideration to local plans that are germane to the development of this RMP. The PRMP/FEIS describes coordination efforts that have occurred during development of the RMP revision (PRMP/FEIS, Chapter 4, pp. 1041-1052).

Although the BLM did not specifically reference Jackson County in the PRMP/FEIS, Appendix W, Comment Response 54 applies to both Josephine County and Jackson County. The BLM invited the counties to become formal cooperators in this planning effort at the beginning of the revision process and again on April 28, 2015. In response to BLMs invitations, both counties chose not to sign a memorandum of understanding which was necessary to become formal cooperators. The BLM reviewed the action alternatives for consistency with the county plans and did not find any major apparent inconsistencies (PRMP/FEIS, p. 1870).

The BLM has signed a memorandum of understanding with Douglas County which identifies the roles and responsibilities of the BLM and the county (PRMP/FEIS, p. 1045). Cooperators have provided written and oral feedback throughout the development of both the Draft RMP/EIS and the PRMP/FEIS (PRMP/FEIS, p. 1046). The Association of O&C Counties is the designated representative of the 15 formal cooperating counties and has expressed a high level of concern about the BLM’s planning process (PRMP/FEIS, p. 1048). The Association of O&C Counties representatives maintain that the BLM should have placed sustained-yield timber production as the primary focus of the planning effort (PRMP/FEIS, p. 1048).

The PRMP/FEIS explains that the O&C Act requires the BLM to offer for sale annually “... not less than one-half billion feet board measure, or not less than the annual sustained-yield capacity when the same has been determined and declared ...” (PRMP/FEIS, p. 107 and 1855). Through the RMPs, the BLM will determine and declare the annual productive capacity for sustained yield timber production or the allowable sale quantity (ASQ). The calculation of the ASQ is a direct output from the vegetation modeling analysis for each alternative and the PRMP and would vary based on the vegetation modeling analysis for each alternative and the PRMP and would vary based on the timing and intensity of timber harvest, silvicultural practices, and restrictions on timber harvest in the Harvest Land Base (PRMP/FEIS, p. 337). The analysis in the PRMP/FEIS explains that under the O&C Act, BLM will determine and declare the annual

sustained yield capacity or the ASQ. On pages 337-339 of the PRMP the BLM discusses the analytical vegetation modeling used to determine the sustained-yield capacity.

The BLM does not accept that the O&C Act requires this RMP revision to provide an annual productive capacity of, “not less than one-half billion feet board measure” of timber. Previous BLM planning efforts, including the 1995 RMPs, determined and declared the annual sustained yield capacity, rendering obsolete the requirement to offer for sale, “not less than one-half billion feet board measure.” This RMP revision will likewise determine and declare the annual sustained yield capacity based on the eventual RMP selected, again rendering obsolete the requirement to offer for sale, “not less than one-half billion feet board measure” (PRMP/FEIS, p. 107).

The purpose and need for the action includes providing a sustained yield of timber but does not specify a target volume of timber. Although the counties assert that all of the PRMPs alternatives fall short of the requisite sustained yield targets, the analysis within the PRMP/FEIS have proven that the sustain yield output is not equal to one-half billion board feet. As stated above, the BLM reviewed the action alternatives for consistency with the county plans and did not find any major apparent inconsistencies (PRMP/FEIS, p. 1870).

The BLM made an effort to cooperate with local governments and successfully entered into formal agreements with 15 of the 18 O&C counties. An action alternative review found that the PRMP is consistent with the individual county plans. Although, the counties have asserted that the PRMP failed to achieve a sustain yield target, the analysis within the PRMP has determined that one-half billion board feet is not a sustainable target. For the reasons stated above, the Protesting Party’s claims are without merit and should be rejected.

FLPMA – Protecting ACECs

Issue Number: PP-OR-RMPforWOr-16-07-1

Organization: Individual

Protester: Byron Rendar

Issue Excerpt Text: Lack of protection for lands with special characteristics like ACECs,

Issue Number: PP-OR-RMPforWOr-16-12-38

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to recognize its responsibilities under FLPMA to designate areas requiring special management. Climate change is real, it's here, it's going to get much worse, and BLM needs to identify and protect climate refugia as part of this plan revision in order to meet its obligations under the Endangered Species Act (i.e., its duty to conserve listed species that evolved under conditions that are cooler and less variable), and other legal and policy mandates.

Issue Number: PP-OR-RMPforWOr-16-17-1

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Klamath-Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: The BLM failed to acknowledge, evaluate, consider protection or otherwise respond to the proposed Rogue Valley Foothills ACEC.

Issue Number: PP-OR-RMPforWOr-16-17-2

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Klamath-Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: The proposed ACEC is not acknowledged anywhere in the Final EIS, let alone evaluated; nor is a response to this substantive proposal provided. See, Appendices F (ACECs) and W (Responses to Comments). The Protesting Parties submitted this proposal as part of an ongoing planning process, which certainly constitutes substantive comments requiring a response under the National Environmental Policy Act (NEPA) and as discussed in BLM's Land Use Planning Handbook. 40 CFR § 1503.4; see also, Handbook 1601-1, p. 23. Further, BLM's ACEC Manual clarifies that BLM must respond to and evaluate ACEC proposals when they are received.

Issue Number: PP-OR-RMPforWOr-16-21-1

Organization: Individual

Protester: Kate Gessert

Issue Excerpt Text: O&C sustained-yield timber harvest at the stand kevel in the Harvest Land Base...” is not consistent with an ACEC with R & I value category “natural processes,” “forest management for maintenance and restoration of R & Is”, and unmanaged mature and late successional forest.

Issue Number: PP-OR-RMPforWOr-16-45-1

Organization: Individual

Protester: Romain Cooper

Rough & Ready ACECs) should be re-allocated to “District Designated Reserve” (or LSR) status and removed from the Harvest Land Base.

Issue Excerpt Text: This Protest argues that the HLB lands in the above named ACECs (Waldo-Takilma, French Flat and

Summary:

The BLM violated FLPMA because the PRMP/FEIS failed to:

- protect areas with special characteristics like ACECs;
- designate areas requiring special management to protect climate refugia;
- consider consistency with the sustained yield provisions of O&C Act and ACECs;
- respond, acknowledge, evaluate, consider protection of Rogue Valley Foothills ACEC; and
- re-allocate Waldo-Takilma, French Flat, and Rough & Ready ACECs as “District Designated Reserves.”

Response:

The BLM has protected Areas of Critical Environmental Concern (ACEC). Section 202(c) of the Federal Lands Policy and Management Act (FLPMA) requires the BLM to give priority to designating and protecting ACECs. 43 U.S.C. 1712(c)(3). ACECs are areas where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (43 U.S.C. 1702(a)). Where the management of O&C lands conflicts with the management of ACECs, the O&C management direction controls use. 43 U.S.C. 1701(b).

The FLPMA provides authority for the designation of Areas of Critical Environmental Concern (43 U.S.C. 1712 [Sec. 202.c.3]). During the planning process for the PRMP/FEIS, the BLM evaluated nominated and existing ACECs to determine whether relevant and important values are present and if special management is needed to maintain those values (PRMP/FEIS, p. 17).

Identification of an area as having relevant and important values does not require designation of that area as an ACEC. To be considered for designation, the potential ACEC must also need special management to retain the relevant and important values. However, the presence of relevant and important values and the identification that special management would be needed to maintain those values does not require designation of that area as an ACEC. Under the FLPMA, the BLM is only required to consider these areas for designation in the land use planning process. The BLM retains discretionary authority to consider, through analysis, as to whether or not to designate an ACEC in favor of management for other priorities or because management of the ACEC would not be consistent with other land management activities (PRMP/FEIS, p. 140).

The BLM has designed land use allocations to respond to the purpose and need. There is no purpose and need that would result in a designation of “climate refugia” on the landscape. The BLM has considered ACECs in this analysis based upon nominations received and consideration of special management and relevant and important values (PRMP/FEIS, p. 1882).

The BLM considered whether the application of special management needed to protect relevant and important values would not preclude sustained-yield timber harvest in the Harvest Land Base. The presence or amount of O&C Harvest Land Base within the potential ACECs varies by alternative and the Proposed RMP. The BLM would not designate ACECs under the Proposed RMP where the needed special management would preclude O&C Harvest Land Base sustained-yield production (PRMP/FEIS, p. 131).

The BLM received the Rogue Valley Foothills ACEC nomination during the planning process and evaluated the nomination against the relevance and importance criteria, as documented in the project file. Through the interdisciplinary evaluation process, the Medford District determined the Rogue Valley Foothills ACEC: (1) did not meet the criteria of relevance or importance for the scenic values for which it was nominated, and (2) did not meet the criteria of importance for the wildlife and natural processes and systems values for which it was nominated. Therefore the Rogue Valley Foothills ACEC was not considered as a potential ACEC and it was not proposed for designation, as a nominated ACEC must meet both relevance and importance criteria in at least one category in order to be proposed for designation (Rogue Valley Foothills ACEC Evaluation Report, p. 4). The Medford District acknowledges that the nominated area is scenic, and that it includes some high-quality natural communities and habitat for rare species. However, the team notes that these resources and attributes are not unique to that area nor are they more outstanding than similar occurrences elsewhere on the Medford District. As the Rogue Valley Foothills ACEC did not meet the criteria to be considered a potential ACEC, the BLM consistent with the agencies guidance in the BLM's ACEC Manual appropriately dropped it from further consideration for ACEC designation and did not include it for consideration with proposed ACECs in the Proposed RMP/Final EIS or develop a response to the nomination in Appendix W of the PRMP/FEIS. The Medford District is in the process of developing a formal response to the nomination which will contain specific details about why the nominated Rogue Valley Foothills ACEC does not meet the relevance and importance criteria required for an area to be proposed for ACEC designation.

As stated above, the BLM retains discretionary authority to consider through analysis as to whether or not to designate an ACEC (PRMP/FEIS, p. 140). The Proposed RMP considered the designation of 131 potential (designated, previously nominated, and 14 newly nominated) Areas of Critical Environmental Concern, totaling up to 104,824 acres or about 4 percent of the planning area (PRMP/FEIS, p. 131). The Protesting Party asserts that the Harvest Land Based lands within the Waldo-Takilma, French Flat, and Rough & Ready ACECs should be designated as "District Defined Reserves". The BLM retained discretionary authority and through the analysis process are proposing to designate 652 acres at the French Flat ACEC, 1,189 acres at the Rough and Ready ACEC, and 1,757 acres at the Waldo-Takilma ACEC.

While not all potential ACECs were selected for designation, the BLM evaluated each (PRMP/FEIS, pp. 1251-1255). Contrary to the Protesting Parties assertions, the BLM did not violate FLMPA as it pertains to the designation of ACECs. For the reasons stated above, the protest points are without merit and are therefore denied.

FLPMA – Rangeland Health

Issue Number: PP-OR-RMPforWOr-16-12-176

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director’s decision is also wrong because the PRMP fails to identify a schedule for improving 12 allotments that do not meet rangeland standards (FEIS/PRMP at 485). The State Director decision is also wrong because the PRMP fails to identify a time table for needed rangeland health assessments on 66 allotments totaling 128,551.

Issue Number: PP-OR-RMPforWOr-16-13-22

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director decision is also wrong because the PRMP fails to identify a schedule for improving 12 allotments that do not meet rangeland standard s (FEIS:485). The State Director decision is also wrong because the PRMP fails to identify a time table for needed rangeland health assessments on 66 allotments totaling 128,55 1 .

Summary:

The BLM violated FLPMA by failing to:

- identify a schedule for improving 12 allotments that do not meet rangeland standards; and
- identify a time table for needed health assessments of 66 allotments.

Response:

The BLM has appropriately complied with the Fundamentals of Rangeland Health. The Fundamentals of Rangeland Health regulations create a framework for evaluating and improving the ecological condition of rangeland used for grazing (43 CFR § 4180 (1995)). Pursuant to the FRH, BLM state directors develop regional standards for rangeland health that apply to grazing permits issued in that region (43 CFR § 4180.2). If BLM determines that the regional standards are not being met and that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to meet those standards, BLM must then take “appropriate action” as soon as practicable but not later than the start of the next grazing season. “Appropriate action” means implementing grazing management actions that will result in significant progress toward fulfillment of the standards (43 CFR § 4180.2(c)). “Significant progress” is “Movement toward meeting standards and conforming to guidelines that are acceptable in terms of rate and magnitude. Acceptable levels of rate and magnitude must be realistic in terms of the capability of the resource, but must also be as expeditious and effective as practical. BLM Handbook 4180, *I-8 (2001).

Current livestock grazing regulations direct the BLM to manage livestock grazing in accordance with Standards for Rangeland Health. The BLM developed the 1997 Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Oregon and Washington (USDI BLM 1997) in consultation with Resource Advisory Councils, Provincial Advisory Committees, tribes, and others. These standards are the basis for assessing and

monitoring rangeland conditions and trend. The BLM implements appropriate action to address the failure to meet standards or conform to guidelines resulting from livestock grazing management or practices on BLM-administered lands through 43 CFR 4180.2(c). PRMP/FEIS, p. 484.

The BLM has assessed 65 percent of livestock grazing allotments and leases within the decision area to determine whether they are meeting rangeland health standards. Completed Rangeland Health Assessments by allotment are available on BLM web sites for the Lakeview and Medford Districts. The BLM found livestock grazing to be a contributing factor in not meeting rangeland health standards in twelve allotments: five in Medford and seven in Klamath Falls. In those allotments, the BLM has taken appropriate action by adjusting livestock grazing management pursuant to direction in 43 CFR 4180.2(c) to ensure significant progress toward meeting the standards and to eliminate livestock grazing as the causal factor for not meeting the health standard. Adjusting livestock grazing management generally requires changes in livestock numbers, season of use, and animal unit months, construction of range improvements, or implementation of intensive livestock grazing systems (PRMP/FEIS, p. 485).

The BLM is completing Rangeland Health Assessments on the grazed allotments lacking an assessment within the decision area based on district priorities. Should assessments find livestock grazing to be a contributing factor to not meeting rangeland standards, the BLM would take appropriate action by adjusting livestock grazing management pursuant to direction in 43 CFR 4180.2 to ensure significant progress toward meeting the standards and to eliminate livestock grazing as the causal factor for not meeting the health standard (PRMP/FEIS, p. 486).

The BLM has taken appropriate action by adjusting livestock grazing management on the 12 allotments not meeting rangeland health standards and is completing Rangeland Health Assessments on the allotments lacking assessments. There is no provision in the CFRs that require the BLM to establish a “time table” for performing Rangeland Health Assessments. Contrary to the Protesting Parties assertion the BLM has not violated FLMPA. For the reasons stated above, the protest points are without merit and are therefore denied.

O&C Lands – Purpose of O&C Relative to Other Laws – General

Issue Number: PP-OR-RMPforWOr-16-12-167

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM can produce wood sustainably as part of its management activities aimed at meeting its legal duties under the O&C Act, FLMPA, Endangered Species Act, Clean Air Act, and Clean Water Act, e.g., community stability, permanent forest, watershed protection, regulate water flow, recreation, recovery of listed species, preventing the need to list more species, etc. Public comments pointed out a variety of ways that regeneration harvest would undermine BLM’s legal duties:

- regeneration logging feeds a volatile industry that destabilizes communities;

- regeneration logging exacerbates global climate change and ocean acidification which undermine community stability, species recovery, and many other policy objectives;
- regeneration logging increases fire hazard;
- regeneration logging does not mimic natural processes so it creates novel forest patterns (e.g., small patch scale) and structures (e.g., shortage of dead wood legacies) that conflict with wildlife conservation;
- regeneration logging creates/degrades scenic values, recreation, and quality of life that need to be conserved as important economic development assets.

In the face of this evidence and the applicable legal standards, BLM has not explained why the FEIS/PRMP persists in calling for regeneration harvest on substantial portions of BLM lands.

Summary:

The BLM has not explained why the Western Oregon PRMP/FEIS refers to regeneration harvest on a substantial portion of BLM lands.

Response:

The BLM took the requisite “hard look” at the environmental effects of the alternatives in the Western Oregon PRMP/FEIS. The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences). (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). The agency may not rely on incorrect assumptions or data when analyzing effects (*Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005)). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts. *Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)).

Harvesting timber on a sustained-yield basis for the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act; 43 USC 1181a et seq.) is required under the O&C Act. Harvesting timber on a sustained-yield basis ensures that the BLM will achieve the purposes of the O&C Act, which include continuing to be able to provide, over the long term, a sustained

volume of timber within the management direction in the RMP. PRMP/FEIS, pp. 5-6. Additionally, the FLPMA specifically provides that if there is any conflict between its provisions and the O&C Act related to management of timber resources or the disposition of revenues from the O&C lands and resources, the O&C Act prevails (i.e., takes precedence) (43 U.S.C. 1701 note (b)) (PRMP/FEIS, p. 6).

Sustained yield is a forestry term that defines the level of timber harvesting that can take place on a forested area in perpetuity, at a given intensity of management; in other words, the level of timber harvest that can be maintained over time (PRMP/FEIS, p. 1063 and 1081) Complying with the principles of sustained yield requires the BLM to verify mathematically that timber harvest levels on allocated forest lands will not decline over time. For the Proposed RMP and alternatives, the BLM has modeled a repeated cycle of harvest and regrowth within the Harvest Land Base that does not decrease over time (see PRMP/FEIS Appendix C on pages 1163 through 1227, for more details on methodology).

The BLM acknowledges that a variety of silvicultural systems or forest management practices are available to meet this stated purpose, and regeneration harvesting is only one broad category. To that end, the BLM evaluated a full spectrum of silvicultural systems in the alternatives. Approaches evaluated in the Harvest Land Base land use allocation in the action alternatives follow, listed in order of intensity from highest to lowest: High Intensity Timber Area (0 percent retention clearcuts), Moderate Intensity Timber Area (5–15 percent retention variable-retention regeneration harvest), Low Intensity Timber Area (15–30 percent retention variable-retention regeneration harvest), Uneven-aged Timber Area (fire resiliency uneven-aged management), and Owl Habitat Timber Area (owl habitat uneven-aged management).

The effects analysis in the Forest Management section of the PRMP/FEIS (on pages 307 through 368) reveals that there are tradeoffs associated with each of these management strategies. For example, Figure 3-65 (page 343) shows that timber volume produced per acre per year is highest under clearcutting regimes, followed by variable-retention regeneration harvesting, uneven-aged management for fire resiliency, and lastly by uneven-aged management for owl habitat development and maintenance. The evaluation of structural stage development presented on page 318 through 333 explains the differences in structural stage development outcomes under each of the silvicultural systems evaluated. It is notable that the analysis indicates that variable-retention regeneration harvesting produces more structurally complex early successional habitat when compared with uneven-aged management or clearcutting regimes. The BLM also evaluated the effects of these different management intensities on other resources throughout the PRMP/FEIS including but not limited to: wildlife, fire and fuels, socioeconomics, climate change, and recreation. In sum, the BLM evaluated the full spectrum of silvicultural systems to meet the purpose of providing a sustained yield of timber, and the effects analysis contained in the document guides the Secretary on the selection of a Proposed RMP.

In meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion under the O&C Act to determine how to manage the forest to provide for permanent forest production on a sustained-yield basis, including harvest methods, rotation length, silvicultural regimes under which these forests would be managed, or minimum level of harvest. PRMP/FEIS, p. 6. Through the RMPs, the BLM will determine and declare the annual

productive capacity for sustained yield timber production. The BLM will make the determination and declaration of the annual productive capacity for each of the six sustained yield units (PRMP/FEIS, p. 4).

As noted above, the Secretary of the Interior has discretion under the O&C Act to determine how to manage the forest to provide for permanent forest production on a sustained-yield basis. This discretion may include regeneration harvesting a portion of the Harvest Land Base. For the reasons stated above, the protest point is without merit, and is therefore denied.

O&C Lands – Purpose of O&C Relative to Other Laws – ESA

Issue Number: PP-OR-RMPforWOr-16-20-5

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The Endangered Species Act does not take precedence over the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-20-6

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The Endangered Species Act does not repeal or amend the O&C Act, and does not provide legal justification for no-harvest reserves within O&C suitable commercial forest lands.

Issue Number: PP-OR-RMPforWOr-16-20-7

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: Under this test, the ESA, a later enacted statute covering a more generalized spectrum, does not by implication repeal the O&C Act - an earlier statute dealing with a narrow, precise, and specific subject - because there is no express contradiction between the two statutes, and the words of the ESA plainly have meaning even if the O&C Act remains in effect as originally enacted.

Issue Number: PP-OR-RMPforWOr-16-20-8

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The BLM was therefore wrong to believe that the ESA can legally "result in some [O&C] lands being managed for objectives other than sustained yield timber production."

Summary: The BLM violated the O&C Act in the Western Oregon PRMP/FEIS because:

- ESA does not take precedence over the O&C Act;
- ESA does not repeal or amend the O&C Act and does not provide a legal basis for no-harvest reserves on suitable commercial forest lands; and
- ESA does not repeal O&C; therefore, the BLM is wrong to manage O&C lands for objectives other than sustained yield timber production.

Response:

The BLM has appropriately reconciled the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 ("O&C Act") with other laws. The BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act ("ESA", 16 USC § 1531 et seq.), the National Environmental Policy Act ("NEPA", 42 USC § 4321 et seq.), and the Clean Water Act (33 USC § 1251 et seq.). The BLM must comply with the O&C Act as well as other environmental statutes, including NEPA and the ESA. *Seattle Audubon Soc’y v. Lyons*, 871 F. Supp. 1291, 1311 (W.D. Wash. 1994),

aff'd sub nom. *Seattle Audubon Soc'y v Moseley*, 80 F.3d 1401 (9th Cir. 1996); *Pac. Rivers Council v. Shepard*, No. 11-cv-442, slip op. at 9 (D. Or. Mar. 20, 2012). When two (or more) statutes apply to a federal undertaking, the agency must "give effect to each if [they] can do so while preserving their sense and purpose." *Watt v. Alaska*, 451 U.S. 259, 264 (1981); *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981).

As noted above, the BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act. In meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion to determine how to manage the forest (PRMP/FEIS, p. 4).

Harvesting timber on a sustained-yield basis for the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act; 43 USC 1181a et seq.) is required under the O&C Act. Harvesting timber on a sustained-yield basis ensures that the BLM will achieve the purposes of the O&C Act, which include continuing to be able to provide, over the long term, a sustained volume of timber within the management direction in the RMP (PRMP/FEIS, p. 6).

Through the RMPs, the BLM will determine and declare the annual productive capacity for sustained yield timber production. The determination of the annual productive capacity includes compliance with other laws and consideration of the objectives, land use allocations, and management direction of the RMPs, which affect the amount of timber that each of the sustained yield units can produce (PRMP/FEIS, p. 4).

Declining populations of species now listed under the Endangered Species Act (16 U.S.C. 1531 et seq.) have caused the greatest reductions and instability in the BLM's supply of timber in the past. Any further population declines of listed species or new species listings would likely lead to additional reductions in timber harvest. Contributing to the conservation and recovery of listed species is essential to delivering a predictable supply of timber. PRMP/FEIS, p. 6.

The BLM recognizes that providing large, contiguous blocks of late successional forest and maintaining older and more structurally-complex multi-layered conifer forests are necessary components of the conservation and recovery of the northern spotted owl. Providing clean water is essential to the conservation and recovery of listed fish, and a failure to protect water quality would lead to restrictions that would further limit the BLM's ability to provide a predictable supply of timber. PRMP/FEIS, p. 6.

The BLM interprets the O&C Act as compatible with the Endangered Species Act, and, as noted above, to achieve the purposes of the O&C Act, the BLM exercises its discretion to determine how best to achieve sustained-yield timber production over the long term and avoid future limitations on timber production (PRMP/FEIS, p. 6). The BLM exercised this discretion as described in the 6 objectives listed under the purpose and need for this RMP revision (PRMP/FEIS, pp. 6-10); therefore, the BLM did not violate the O&C Act in the Western Oregon PRMP/FEIS.

O&C Lands – Socioeconomics

Issue Number: PP-OR-RMPforWOr-16-10-11

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: In light of this, if the rate of harvest on private timberlands is unsustainable then BLM must adjust its allowable sale quantities (ASQ) calculations downward to ensure that the overall supply of timber and other goods and services from all Oregon’s forestlands comes closer to a level that is commensurate with maintaining permanent forest production and the principle of sustained yield. If BLM fails to do this, then it will be exacerbating rather than countering the effects of overharvesting on lands outside its jurisdiction.

Issue Number: PP-OR-RMPforWOr-16-10-5

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: While current practice is to offer timber for sale at or below a fair market value based on current market prices for comparable timber, there is nothing to suggest that this price setting method is reasonable, especially when the agency has at its disposal other methods for determining fair market value that are designed to cover all costs of production from the seller’s (BLM) perspective. The issue of sales below fair market value from the seller’s perspective is an issue that has plagued the agency for decades, and one that could be remedied in this planning cycle.

Issue Number: PP-OR-RMPforWOr-16-10-8

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The BLM has an obligation to incorporate this information into the design of its timber sale program so that minimum bids received reflect the true social cost of providing timber from federal land and thus reflect a reasonable price.

Issue Number: PP-OR-RMPforWOr-16-10-9

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: The second condition Congress set on the offering of timber from O&C lands is the condition that BLM only participate in “normal” markets. The concept of normal markets is a precise term for economists. It means markets that are not distorted by one or more market failures that take the form of externalities, public goods, missing markets, subsidies, monopoly power, barriers to competition, and asymmetrical information.²³ Markets for BLM timber are severely distorted by many of these market failures.

Issue Number: PP-OR-RMPforWOr-16-12-142

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS failed to look at the adverse effects of volatility at the local level. Volatility would have its greatest effect in local communities that have the

lowest levels of economic diversity, the greatest dependence on commodity production, and would therefore see the greatest fluctuations in jobs and income. The gain and loss of jobs caused by timber industry volatility would cause a variety of social problems.

Issue Number: PP-OR-RMPforWOr-16-12-144

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS failed to disclose that increasing federal timber supply will not prevent the overall declining trend of employment in the timber industry.

Issue Number: PP-OR-RMPforWOr-16-12-145

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP fails to comply with the O&C Act's mandate to foster community stability when it could do so by increasing forest conservation which helps stabilize communities by enhancing quality of life and helping to diversify the economy so communities are less dependent on the inherently volatile timber industry.

Issue Number: PP-OR-RMPforWOr-16-29-13

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: Logging these specific areas and removing Lands with Wilderness Characteristics designation would undermine the "economic stability" that the O&C Act is supposed to protect.

Issue Number: PP-OR-RMPforWOr-16-29-15

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: Congress did not support maximum timber production for short-term gain – it sought to institute long-term sustainability and a diversified economy.

Issue Number: PP-OR-RMPforWOr-16-29-7

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The FEIS and PRMP does not balance those scales, but instead promotes a timber heavy interpretation of the O&C Act that degrades natural resource values, community economic stability, and ignores the modern diversified economy.

Issue Number: PP-OR-RMPforWOr-16-12-141

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Even though the FEIS really only looked at timber jobs and recreation jobs, and failed to disclose amenity- induced job creation.

Issue Number: PP-OR-RMPforWOr-16-29-14

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: Removing these areas from Lands with Wilderness Characteristics designation and allowing logging and road building to overwhelm these wild areas will impact the future recreational values and economic opportunities the Applegate Valley is working hard to support. Any reasonable economic analysis would support these conclusions. The BLM unfortunately is living in the past and has refused to acknowledge current economic realities in southwestern Oregon.

Issue Number: PP-OR-RMPforWOr-16-10-10

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: Congress also put constraints on BLM's timber sale program in the form of a set of purposes that a sustained yield supply of timber is supposed to serve alongside the purpose of a permanent source of timber supply. These include "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities."³⁵ But the proposed increase in logging of 37% and 400 new miles of road runs counter to these purposes.

Issue Number: PP-OR-RMPforWOr-16-31-6

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: The RMP significantly increases timber harvest volumes, with an increased certainty on harvest levels without any equivalent certainty for the production of other resources of known economic value

to local communities, such as clean water, thriving fisheries, quiet recreation and the concomitant recreation and tourist economy. Logging is a boom-bust industry that has been shown to weaken local communities due to unstable, temporary jobs. The BLM violates the O&C Act by failing in this way to stabilize communities. Automation continues to drive down employment and the value of harvest volume, while retained forests become comparatively more valuable. Greater emphasis should be placed on the economic value of intact forests. One sector that is not adequately addressed in the proposal is the outdoor recreation industry which will outperform the timber industry in terms of dollars and jobs. Recently, U.S. Interior Department Secretary Sally Jewell directed study of the impact that outdoor recreation has on the nation's economy. A statement from the agencies involved in this effort indicated that the outdoor recreation sector supports more jobs than many American industries. The Colorado-based trade group Outdoor Industry Association recently released an analysis finding that outdoor recreation in Oregon generated \$12.8 billion in consumer spending, 141,000 direct jobs, \$4 billion in wages and \$955 million in state and local tax revenue. The RMP should focus on developing a truly sustainable economic benefit of the resource values of BLM managed lands to the surrounding communities. The RMP lacks an explicit strategy to address the role older forests play both in carbon storage and in avoiding, minimizing, and mitigating impacts on climate change. Climate change is destabilizing to communities (community destabilization is in violation of the O&C Act.)

Issue Number: PP-OR-RMPforWOr-16-35-2

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The BLM violated the O&C Act by failing to help stabilize communities. The issues inherent in the boom and bust cycles of the timber industry are a direct threat to the stability of local communities. The monetary benefits of cutting the timber are extremely short lived and short sighted and leave many future

costs for communities to live with indefinitely. Also, by contributing to global warming and climate change, the proposed plan is contributing to further destabilization of communities. Conservation and restoration has proven to be stabilizing.

Summary:

The BLM's overemphasis in the Western Oregon PRMP/FEIS on timber will destabilize local communities, in violation of the O&C Act. The BLM's prioritization of timber contradicts the purpose of the O&C Act to protect ecosystem services and economic stability of local communities and industries, and to provide recreational facilities. The BLM violates the O&C Act by proposing timber activities that will destabilize communities. Specifically, the BLM:

- "Really only looked at timber jobs and recreation jobs," but not other sources of revenue, including amenity-induced job creation;
- failed to address the volatility of timber markets in the Western Oregon PRMP/FEIS, the result of which will have quality-of-life consequences on local communities, including unemployment and other social problems; and
- failed to protect ecosystem services. The Western Oregon PRMP/FEIS proposes an increase in logging of 37% and 400 new miles of road.

Response:

The O&C Act requires that the O&C lands be managed "for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities" (43 USC 1181a) "...really only looked at timber jobs and recreation jobs..."

Through BLM's management of public lands, including O&C lands, the agency contributes economically to the entire planning area. The agency's work triggers direct, indirect, and induced effects that may be found in every industry of western Oregon's local economy (PRMP/FEIS, p. 668).

"Fails to address the volatility of timber markets...with consequences on communities."

The BLM clearly acknowledges and accounts for volatility of timber markets in its analyses and response to comments. In the jobs and income analysis, the BLM details the potential effects of timber harvest on the local economy for the first decade of implementation of the alternatives. The BLM's volatility analysis examines growth rates over several decades given historic patterns (p. 698-703). In the jobs and income analysis, the BLM concludes, "Because the timber industry has a long, national history of high volatility, alternatives and the Proposed RMP with harvest

volumes that exceed current levels are likely to introduce greater instability into local economies, based on past business cycles. The expansion of existing timber-based corporations or the addition of new ones would bring additional jobs and earnings to the planning area, but could make the whole planning area more vulnerable to large fluctuations...” (p. 702).

Under the O&C Act, the BLM is required by Congress to manage timber for permanent production while contributing to the economic stability of local communities and industries. The BLM analyzed the effects of timber, recreation, and other amenity-induced jobs as well as the effects of volatility on local economies and community stability. The BLM has complied with the O&C Act.

“Fails to protect ecosystem services by proposing an ‘...increase in logging of 37% and 400 new miles of road’ [1] .”

Under the O&C Act, the BLM is not called to specifically “protect ecosystem services” but rather watersheds and stream flow. BLM’s analyses include quantification of anticipated new road construction within the sediment delivery distance of streams. The BLM determined road miles by harvest type and distributed by road type (paved, gravel and natural surface) and then quantified and analyzed the resultant sediment delivery (USDI BLM 2016, pp. 405-407). The PRMP/FEIS explains that relatively few new roads would be constructed in the future under any of the alternatives compared to the existing road system (p. 405).

Furthermore, as stated in Appendix W of the DRMP/EIS, the BLM would maintain water quality at the highest practicable level to meet water quality standards and Total Maximum Daily Load (TMDL) load allocations as set by the State of Oregon’s Department of Environmental Quality (p 1346). The PRMP would also provide source water protection (p. 653-654).

Nonetheless, The PRMP/FEIS identifies important ecosystem service values attributed to the analysis area, including biodiversity and sensitive species, scenic amenities, and cultural resources (p. 600). Because people rely on these ecosystem services, the BLM quantifies them. Issue 1 of the Socioeconomics section of the PRMP/FEIS clarifies how the BLM estimated the market and non-market values of ecosystem services, and what the values mean in the context of the alternatives and the PRMP/FEIS (p. 590-657).

O&C Lands – Harvest Rates & Volume – Forest Production

Issue Number: PP-OR-RMPforWOr-16-09-1

Organization: Association of O&C Counties

Protester: Kevin Davis (Attorney)

Issue Excerpt Text: The PRMP allocates more than 75 percent of all lands and approximately 80 percent of all timberlands to reserves in which sustained yield timber production will not be allowed. In so doing, the PRMP clearly violates the O&C Act, which expressly requires that O&C and CBWR lands “which have heretofore or may hereafter been classified as timberlands, and power site lands valuable for timber, shall be managed...for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield...” 43 USC §1181a. (Emphasis added.) The word “shall” in this context has a plain meaning. “[T]he mandatory 'shall' ... normally creates an obligation impervious to judicial discretion” (Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998)). Congress uses “a mandatory 'shall' ... to impose discretionless obligations.” (Lopez v. Davis, 531 U.S. 230, 241 (2001)). “Cases are legion affirming the mandatory character of “shall” 'U.S. v. Insurance Co. of North Am., 83 F.3d 1507, 1510 n.5 (D.C. Cir. 1996). Given these considerations, there is no question that the Act imposes mandatory actions over which the BLM has no discretion, foremost of which is this: If lands are classified as timberland, they must be managed for permanent forest production on a sustained yield basis. While the BLM may retain some discretion as to how it implements this requirement, such as where and when timber is to be cut in the first instance, such discretion cannot be used to

defeat the mandatory objectives of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-09-7

Organization: Association of O&C Counties

Protester: Kevin Davis (Attorney)

Issue Excerpt Text: The O&C Act in section 1181a requires that “such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed , except as provided in section 3 hereof [regarding grazing lands], for permanent forest production , and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield . . . and the annual productive capacity for such lands shall be determined and declared as promptly as possible after August 28, 1937” (Underlining added.) This language makes it perfectly clear that the “annual productive capacity” must be calculated for all lands classified as timberland s. It is a matter of growth net of mortality on all timberlands. The BLM in its PRMP has grossly violated this mandatory obligation by, among other things, illegally placing approximately 80 percent of its timberlands in reserves and excluding them from its calculation of the annual productive capacity.

Issue Number: PP-OR-RMPforWOr-16-09-2

Organization: Association of O&C Counties

Protester: Kevin Davis (Attorney)

Issue Excerpt Text: These and many other authorities make clear the BLM has a mandatory duty to manage the O&C lands for permanent timber production on a sustained yield basis and its discretion in doing so is narrowly bounded.

Issue Number: PP-OR-RMPforWOr-16-09-3

Organization: Association of O&C Counties

Protester: Kevin Davis (Attorney)

Issue Excerpt Text: The O&C Act Establishes a Mandatory Minimum Harvest Level. The O&C Act, 43 USC §1181a requires the following:
“The annual productive capacity for such lands shall be determined and declared as promptly as possible after August 28, 1937, but until such determination and declaration are made the average annual cut therefrom shall not exceed one-half billion feet board measure: Provided, That timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.”

Issue Number: PP-OR-RMPforWOr-16-20-1

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: Violation of O&C Act: unlawful establishment of no-harvest reserves on O&C lands that BLM has classified as timberlands capable of sustained-yield timber production.

Issue Number: PP-OR-RMPforWOr-16-20-3

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The plain meaning of the law requires that all those acres must be managed “for permanent forest production,” and the timber on all those acres must be “sold, cut, and removed in conformity with the princip[le] of sustained yield.”

Issue Number: PP-OR-RMPforWOr-16-20-4

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The plain meaning of the O&C Act, revealed by its text, structure, context and purpose, forbids BLM from placing suitable commercial forest land into reserves, as it did in the PRMP and all the alternatives, that prohibit timber from being “sold, cut, and removed in conformity with the princip[le] of sustained yield.”

Issue Number: PP-OR-RMPforWOr-16-20-10

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The O&C Act imposes on the BLM a non-discretionary duty every year to sell, or at least offer for

sale at reasonable prices, the annual productive capacity of timber that it has determined and declared for each of its districts.

Issue Number: PP-OR-RMPforWOr-16-20-2

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The PRMP and all the alternatives violate the O&C Act by failing to provide an annual sustained yield capacity (or allowable sale quantity (ASQ))² of timber sales equal to approximately 1.2 billion board feet.

Issue Number: PP-OR-RMPforWOr-16-20-21

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: Failure to justify choosing an alternative that does not maximize the timber production rates on the Harvest Land Base.

Issue Number: PP-OR-RMPforWOr-16-20-9

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The plain meaning of the O & C Act, confirmed by its legislative history, imposes a mandatory duty on the BLM annually to offer to sell its declared annual sustained yield capacity of the O & C lands. The O&C Act imposes on the BLM a non-discretionary duty every year to sell, or at least offer for sale at reasonable prices,

the annual productive capacity of timber that it has determined and declared for each of its districts.

Issue Number: PP-OR-RMPforWOr-16-30-1

Organization: Josephine County

Protester: M. Wally Hicks

Issue Excerpt Text: Josephine County will be adversely affected by the BLM's PRMP in the following respects, among others: - The annual timber sale quantity projected by the PRMP is approximately half the minimum required by the O&C Act. - The timber sale program will produce less than half the minimum required by the O&C Act - The timber sale program will produce less than half the revenue it should, depriving the County of many millions of dollars every year and forcing layoffs of County employees and reductions in basic public services. Also, failure by the BLM to manage all O&C and CBWR timberlands for sustained yield production with a minimum timber sale level of 500 MMbf per year will deprive the wood products industry of raw materials for mills and manufacturing that support jobs and economic activity, resulting in increased levels of unemployment, increased demand on services provided by the County, and lower property values, all leading to community instability and economic malaise.

Issue Number: PP-OR-RMPforWOr-16-30-6

Organization: Josephine County

Protester: M. Wally Hicks

Issue Excerpt Text: Failure to include all timberlands when calculating the annual productive capacity of the O&C and CBWR lands.

Summary:

The BLM violated the O&C Act in the Western Oregon PRMP/FEIS by failing to ensure permanent forest production, manage all timber lands for sustained-yield production, and establish an appropriate annual sustained-yield capacity.

Response:

The BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act (“ESA”, 16 USC § 1531 et seq.), the National Environmental Policy Act (“NEPA”, 42 USC § 4321 et seq.), and the Clean Water Act (33 USC § 1251 et seq.). The BLM must comply with the O&C Act as well as other environmental statutes, including NEPA and the ESA (*Seattle Audubon Soc’y v. Lyons*, 871 F. Supp. 1291, 1311 (W.D. Wash. 1994), aff’d sub nom. *Seattle Audubon Soc’y v Moseley*, 80 F.3d 1401 (9th Cir. 1996); *Pac. Rivers Council v. Shepard*, No. 11-cv-442, slip op. at 9 (D. Or. Mar. 20, 2012)).

The O&C Act established sustained-yield timber production as the primary or dominant use of O&C lands in western Oregon. However, when implementing the O&C Act, the BLM must do so in full compliance with a number of subsequent laws that direct how the BLM accomplishes the statutory direction (PRMP/FEIS, p. 14). The “multiple purposes “of the O&C Act and the relationship of the O&C Act to other laws are addressed further in Sections 3.1 and 3.7”.

The BLM based the purpose and need for this RMP revision on the laws that apply to the BLM. The BLM designed the alternatives to make a substantial and meaningful contribution to meeting each of the purposes (PRMP/FEIS, p. 10). An alternative that would fail to meet any one of the purposes, or is inconsistent with BLM’s statutory authority, would not be a reasonable alternative (PRMP/FEIS, pp. 99, 1833-1834).

As stated previously, in meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion under the O&C Act to determine how to manage the forest to provide for permanent forest production on a sustained-yield basis, including harvest methods, rotation length, silvicultural regimes under which these forests would be managed, or minimum level of harvest (PRMP/FEIS, pp. 6, 14).

Harvesting timber on a sustained-yield basis ensures that the BLM will achieve the purposes of the O&C Act, which include continuing to be able to provide, over the long term, a sustained volume of timber within the management direction in the RMP. Contributing to the conservation and recovery of listed species is essential to delivering a predictable supply of timber. PRMP/FEIS, p. 6. By protecting and managing habitat now, the BLM can best avoid future, disruptive restrictions on sustained-yield timber production (PRMP/FEIS, p. 1836).

The BLM exercises its discretion to determine how best to achieve sustained-yield timber production over the long term and avoid future limitations on timber production (PRMP/FEIS, p. 6). The protester perpetuates a simplified interpretation of the O&C Act in stating that reserve areas are inconsistent with the O&C Act and the principle of sustained yield. The O&C Act does

not require a specific harvest level, nor require that all lands be available for harvest. The exclusion of no-harvest reserve areas would not be reasonable, because it would not meet the purpose and need. Contributing to the conservation and recovery of the spotted owl necessarily includes maintaining (i.e., reserving) older and more structurally-complex multi-layered conifer forests (PRMP/FEIS, p. 105). The BLM has determined that the Harvest Land Base is sufficient to provide for sustained-yield timber production; the protester fails to show that the BLM's determination is in error or that an alternative with a larger harvest land base would meet all of the purposes of the action (PRMP/FEIS, p. 1854).

The protester asserts that the BLM is required to offer the full sustained-yield capacity on an annual basis. As described in the Draft RMP/EIS, and the PRMP/FEIS, the Records of Decision for the approved RMPs will define any necessary transition period from the declarations of the annual productive capacity in the 1995 RMPs to the declaration of the annual productive capacity in the approved RMPs (Draft RMP/EIS, p. 4, PRMP/FEIS, p. 1998). The BLM received no comments on the description of this process. The protester implies that this variation would only allow the BLM to offer for sale less than the annual productive capacity; however, the protester fails to acknowledge that this variance would also allow BLM to offer for sale in excess of the annual productive capacity. Regardless, the Proposed RMP does not define this variation. The protester objects to a variation that has not yet been declared, but fails to demonstrate an error in BLM's decision.

The BLM does not accept that the O&C Act requires this RMP revision to provide an annual productive capacity of, "not less than one-half billion feet board measure" of timber. The BLM considered but did not analyze in detail an alternative with this requirement (PRMP/FEIS, p. 107). The O&C Act allows the BLM to use discretion between the requirements in the Act to offer for sale annually "... not less than one-half billion feet board measure, **or** not less than the annual sustained-yield capacity when the same has been determined and declared ..." (emphasis added) (PRMP/FEIS, pp. 107, 1855). The word 'or' in the O&C Act allows the BLM to exercise its discretion when establishing the sustained yield capacity of O&C lands which will be determined and declared through the RMP.

Previous BLM planning efforts, including the 1995 RMPs, determined and declared the annual sustained yield capacity, rendering obsolete the requirement to offer for sale, "not less than one-half billion feet board measure." This RMP revision will likewise determine and declare the annual sustained yield capacity based on the eventual RMP selected, again rendering obsolete the requirement to offer for sale, "not less than one-half billion feet board measure" (PRMP/FEIS, p. 107).

The purpose and need for the action includes providing a sustained yield of timber but does not specify a target volume of timber. The basic policy objectives described in the guidance for development of all action alternatives stipulate that the alternatives must make a substantial and meaningful contribution to each of the purposes for action to be considered reasonable (PRMP/FEIS, p. 107). The analyses in the PRMP/FEIS have proven that the sustain yield output is not equal to one-half billion board feet.

Based on the information above, the BLM has complied with the O&C Act by properly classifying timberlands for sustained yield timber production, establishing the harvest level to provide not less than the annual sustained yield capacity, and ensuring permanent forest production.

O&C Lands – Harvest Rates & Volume – ASQ

Issue Number: PP-OR-RMPforWOr-16-20-17

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text: The BLM failed to consider the harvest impact of placing 172,629 acres of the Harvest Land Base into designated Northern Spotted Owl Critical Habitat where the Endangered Species Act does or may prohibit adverse modification of habitat.

Issue Number: PP-OR-RMPforWOr-16-20-20

Organization: American Forest Resource Council

Protester: Travis Joseph

Issue Excerpt Text:

The impacts on timber harvest and the calculation of the ASQ of designating 491,042 acres as Recreation Management Areas were not disclosed...See page 562. The error may have affected all the land allocations.

Summary:

The BLM violated NEPA in the Western Oregon PRMP/FEIS by failing to disclose impacts on ASQ related to northern spotted owl critical habitat and identification of Recreation Management Areas.

Response:

The BLM has appropriately analyzed the impacts of the alternatives in the Western Oregon PRMP/FEIS. Data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR § 1502.15), and NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR § 1500.1(b)). The BLM is required to take a “hard look” at the potential environmental impacts of adopting the Western Oregon PRMP (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). A “hard look” means to make a comprehensive consideration of a proposed action, to evaluate different courses of action (*Id.*). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts (*Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072) (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)). The BLM must analyze the effects of each alternative considered in detail, sufficient for the decision maker and the public to evaluate their comparative merits (40 CFR § 1502.14(b)). The BLM need not speculate about all conceivable impacts, and it need not evaluate impacts where there is no close causal relationship between the action and the change in the physical environment. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 774-75 (1983).

Designated northern spotted owl critical habitat is part of the existing conditions/affected environment in the decision area. Table 3-279 (PRMP/FEIS, p. 991) shows that all alternatives, with the exception of the No Action alternative, include Harvest Land Base in northern spotted

owl critical habitat, and the effects of timber harvest in northern spotted owl critical habitat using the management guidelines in Appendix B of the PRMP/FEIS (pp. 1097-1162) were disclosed in the PRMP/FEIS (p. 990-998). “Under all alternatives and the Proposed RMP, the BLM would manage northern spotted owl critical habitat in accordance with the special management considerations or protections mandated by the final rule on critical habitat” (PRMP/FEIS, p. 990). The BLM designed management guidelines in Appendix B. PRMP/FEIS, pp. 1097-1162 to ensure the compatibility of timber harvest on the Harvest Land Base with the northern spotted owl critical habitat rule. The BLM modeled changes to vegetation and estimated ASQ timber harvest levels in accordance with these management guidelines (Appendix C. PRMP/FEIS, pp. 1163-1227). Therefore, the BLM’s analysis and disclosure of ASQ harvest volume in Table 3-55 of the PRMP/FEIS (p. 341) properly accounts for the impacts of northern spotted owl critical habitat on the ASQ.

There was no error in the acres designated as Recreation Management Areas as the protester asserts. The Proposed RMP would designate a total of 491,042 acres as Recreation Management Areas. This includes 116 SRMAs totaling 70,730 acres and 132 ERMAs totaling 420,312 acres. PRMP/FEIS, p. 565. Table 3-125 (PRMP/FEIS, p. 562) and Table 3-126 (PRMP/FEIS, p. 563) display the acres designated as Special Recreation Management Areas and Extensive Recreation Management Areas, which total 420,042 acres.

ERMAs would not impact the BLM’s ability to produce ASQ timber harvest, whereas SRMAs could restrict but not preclude timber harvest where there is overlap with the Harvest Land Base. As explained on page 349 of the PRMP/FEIS, the BLM identified 7,926 acres of the Harvest Land Base under the Proposed RMP that would overlap SRMAs and potentially restrict timber harvest. The BLM accounted for this by allocating those lands to lower intensity management Harvest Land Base allocations to ensure compatibility with SRMA management and produce a more accurate ASQ estimate. “In the Proposed RMP, the BLM designated SRMAs overlapping the Harvest Land Base on O&C lands as Uneven-aged Timber Area in the western half of the Klamath Falls Field Office, the Medford District, and the South River Field Office of the Roseburg District. In the Coos Bay, Eugene, and Salem Districts, and the Swiftwater Field Office of the Roseburg District, the BLM designated these overlapping SRMAs as Low Intensity Timber Area” (PRMP/FEIS p. 349). ASQ harvest volume displayed in Table 3-55 of the PRMP/FEIS (p. 341) reflects modeled timber harvest consistent with the management guidelines for these land use allocations in Appendix B. PRMP/FEIS, pp. 1097-1162. The BLM analyzed and disclosed timber volume that reflects harvest restrictions identified in Appendix B that are associated with these designations.

Based on the information above, the BLM has complied with the NEPA by considering the effects of northern spotted owl critical habitat and designation of Recreation Management Areas on ASQ.

O&C Lands – Multiple Purposes

Issue Number: PP-OR-RMPforWOr-16-46-10

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: The BLM has failed to maintain this “permanent source” and subsequently this plan fails to show how they will do so. The plan fails in every instance of adverse impact and protest stated in Attachments A & B of this submission.

Issue Number: PP-OR-RMPforWOr-16-08-1

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: The PRMP ignores the explicit timber resource management provisions of the O & C Acts which requires that all lands biologically capable of producing timber...the PRMP simply results in a destabilizing death spiral for Douglas County, rather than a pathway to the up building of the community.

Issue Number: PP-OR-RMPforWOr-16-08-3

Organization: Douglas County

Protester: Tim Freeman

Issue Excerpt Text: It is therefore in violation of the O & C Act for the BLM to reserve or otherwise manage O & C lands classified as timberlands for any dominant purpose other than timber production.

Issue Number: PP-OR-RMPforWOr-16-09-4

Organization: Association of O&C Counties

Protester: Kevin Davis (Attorney)

Issue Excerpt Text: The O&C Act sets an absolute limit to the BLM's discretion to lower annual harvest levels in order to achieve the secondary uses identified in the O&C Act and to achieve the goals of the ESA. The BLM must seek to simultaneously achieve these sometimes-competing goals, but in no event may the BLM lower harvest levels below 500 MMbf per year.

Issue Number: PP-OR-RMPforWOr-16-35-3

Organization: Individual

Protester: Serena Rittenhouse-Barry

Issue Excerpt Text: The BLM violated the O&C Act by failing to protect watersheds and regulate water flow. The plan includes too much logging and too many new roads that will have devastating impacts on water quality and quantity by removing the tree canopy and exposing the ground to sun and drought in the summer and heavy erosion and sedimentation into streams when it rains in the winter.

Issue Number: PP-OR-RMPforWOr-16-38-6

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The BLM Failed to Comply with the Oregon and California Lands Act.

Issue Number: PP-OR-RMPforWOr-16-38-7

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: In the O&C Act, Congress intended to preserve, protect and sustain forests for all of their values, not just timber at the expense of all other forest values.

Issue Number: PP-OR-RMPforWOr-16-38-8

Organization: Deer Creek Valley NRCA

Protester: Mary Camp

Issue Excerpt Text: The O&C Act lays out multiple goals for O&C lands. The lands must be managed for the purpose of “protecting watersheds, regulating stream flow... and providing recreational facilities.”

Issue Number: PP-OR-RMPforWOr-16-04-9

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The FEIS and PRMP does not balance those scales, but instead promotes a timber heavy interpretation of the O&C Act that degrades natural resource values, community economic stability, and ignores the modern diversified economy.

Issue Number: PP-OR-RMPforWOr-16-46-8

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: The State Director's decision to adopt this FEIS and the ensuing RMPs is wrong because it fails to conform to the mandates of the O&C Act, that O&C

lands shall be managed “for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.”

Issue Number: PP-OR-RMPforWOr-16-29-16

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The O&C Act lays out multiple goals for O&C lands and numerous of these goals are being systematically ignored or degraded by the timber heavy interpretation of the O&C Act informing BLM land management.

Issue Number: PP-OR-RMPforWOr-16-12-8

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM has the legal authority – and in fact a duty – to classify lands as not suitable for timber production and to reduce timber harvests as necessary in order to comply with the provisions of other laws, as well as the multiple mandates of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-29-5

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: To do otherwise would violate the multiple use mandates of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-29-6

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The O&C Act mandates managing timber in a way that will sustain other important natural and social values such as stream flows, wildlife habitat and recreation.

Issue Number: PP-OR-RMPforWOr-16-12-26

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM misreads the law and finds a conflict where there is none. The savings clause of the O&C Act pertains to the distribution of timber receipts, NOT to the establishment of sustainable harvest levels. In fact, the O&C Act is already a multiple use law,

recognizing watershed, water flow, recreation, and community stability. The multiple use mandate in FLPMA is not inconsistent with the O&C Act. It just helps BLM more accurately determine sustainable harvest levels by providing a broader scope of public values that BLM can consider in determining sustainable harvest. There is no unavoidable conflict between FLPMA and the O&C Act. BLM conclusion to the contrary is legal error.

Issue Number: PP-OR-RMPforWOr-16-12-159

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Salvage logging should be avoided and minimized because it will violate the O&C Act mandate to protect watersheds and favorable conditions of water flow. Salvage retards watershed and aquatic recovery.

Summary:

The BLM has violated the mandates of the O&C Act by:

- failing to maintain this “permanent source” [of timber];
- setting harvest levels below 500 MMbf in order to achieve secondary uses identified;
- ignoring the timber resource management provisions by not classifying all lands that are biologically capable of producing timber, as timberlands;
- classifying timberlands for purposes other than timber production;
- failing to classify lands as not suitable for timber production;
- promoting a timber heavy interpretation of the Act which degrades natural resource values, community economic stability, and ignores the modern diversified economy;
- failing to protect watersheds and regulate stream flow, wildlife habitat, and recreation;
- misreading the law...and determining that there is unavoidable conflict between FLPMA and the O&C Act; and
- failing to avoid/minimize salvage logging because it will violate the O&C Act mandate to protect watersheds and water flow.

Response:

The BLM has appropriately reconciled the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (“O&C Act”) with other laws. The BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act (“ESA”, 16 USC § 1531 et seq.), the National Environmental Policy Act (“NEPA”, 42 USC § 4321 et seq.), and the Clean Water Act (33 USC § 1251 et seq.). The BLM must comply with the O&C Act as well as other environmental statutes, including NEPA and the ESA. *Seattle Audubon Soc’y v. Lyons*, 871 F. Supp. 1291, 1311 (W.D. Wash. 1994), *aff’d sub nom. Seattle Audubon Soc’y v Moseley*, 80 F.3d 1401 (9th Cir. 1996); *Pac. Rivers Council v. Shepard*, No. 11-cv-442, slip op. at 9 (D. Or. Mar. 20, 2012). When two (or more) statutes apply to a federal undertaking, the agency must “give effect to each if [they] can do so while preserving their sense and purpose” (*Watt v. Alaska*, 451 U.S. 259, 264 (1981); *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981)).

...failing to maintain this “permanent source” [of timber] and setting harvest levels below 500 MMbf in order to achieve secondary uses identified...

The O&C Act requires that the revested Oregon and California Railroad Grant lands and reconveyed Coos Bay Wagon Road Grant lands (O&C lands) be managed “for permanent forest production...in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities” (43 USC 1181a). The O&C Act goes on to state that “[t]he annual productive capacity for such lands shall be determined and declared...[p]rovided, [t]hat timber from said lands...not less than the annual sustained yield capacity...” (PRMP/FEIS, p. 6).

In meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion under the O&C Act to determine how to manage the forest to provide for permanent forest production on a sustained-yield basis, including harvest methods, rotation length, silvicultural regimes under which these forests would be managed, or minimum level of harvest (PRMP/FEIS, p. 6).

Through the RMP’s, the BLM will determine and declare the annual productive capacity for sustained yield timber production or the allowable sale quantity (ASQ). The calculation of the ASQ is a direct output from the vegetation modeling analysis for each alternative and the PRMP and would vary based on the timing and intensity of timber harvest, silvicultural practices, and restrictions on timber harvest in the Harvest Land Base (PRMP/FEIS, p. 337). On pages 337-339 of the PRMP the BLM discusses the analytical vegetation modeling used to determine the sustained-yield capacity. The BLM appropriately determined the sustained-yield harvest level through the use of vegetation modeling. Contrary to the protestors assertion, the O&C Act allows the BLM to use discretion between the requirements in the Act to offer for sale annually “... not less than one-half billion feet board measure, **or** not less than the annual sustained-yield capacity when the same has been determined and declared ... [emphasis added]” (PRMP/FEIS, p. 107 and 1855). The word ‘or’ in the O&C Act allows the BLM to exercise its discretion when establishing the sustained yield capacity of O&C lands which will be determined and declared through the RMP.

...ignoring the timber resource management provisions by not classifying all lands that are biologically capable of producing timber, as timberlands and classify timberlands for purposes other than timber production...

The BLM recognizes that providing large, contiguous blocks of late successional forests and maintaining older and more structurally-complex multi-layered conifer forests are necessary components of the conservation and recovery of the northern spotted owl. Providing clean water is essential to the conservation and recovery of listed fish, and a failure to protect water quality would lead to restrictions that would further limit the BLM's ability to provide a predictable supply of timber (PRMP/FEIS, p. 6). Thus, if the BLM does not exercise discretion to determine how to best achieve the multiple objectives of the O&C Act, such as defining a Harvest Land Base and Reserve land use allocation system, the BLM's ability to provide a sustained yield of timber, over the long term and avoid future limitations on timber production is not achievable.

...failing to classify lands as not suitable for timber production...

The BLM may manage areas identified as unsuitable for sustained-yield timber production (e.g., areas or soil conditions for which regeneration would be difficult) through the Timber Production Capability Classification (TPCC) system for other uses, if those uses are compatible with the reason for which the BLM has reserved these lands (as identified by the TPCC codes). The BLM will periodically add or remove areas to those areas reserved through updates to the TPCC system, when examinations indicate the change to be appropriate. BLM describes the TPCC system and its use in the Woodstock vegetation model in Appendix C – Vegetation Modeling (PRMP/FEIS, pp. 1873-1874). Contrary to the assertion the BLM has classified lands as not suitable for timber production through the TPCC system.

...promoting a timber heavy interpretation of the Act which degrades natural resource values, community economic stability, and ignores the modern diversified economy and failing to protect watersheds, regulate stream flow, wildlife habitat, and recreation...

As stated above, the O&C Act provides the legal authority to the Secretary of the Interior for management of the O&C lands (PRMP/FEIS, p. 14). The O&C Act requires that O&C lands classified as “timberlands...be managed...for permanent forest production...with the principle of sustained yield” (PRMP/FEIS, p. 14). The PRMP has stated that one of the purposes is to provide a sustained yield of timber (PRMP/FEIS, p. 6). Pages 6-10 of the PRMP/FEIS list 6 objectives for the RMP revision, of which sustained yield is one objective. Providing a sustained yield of timber is not synonymous with an increase in logging. The BLM is not promoting a timber heavy interpretation of the O&C Act that degrades other resources values.

The O&C Act directs the BLM to provide “for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities” (PRMP/FEIS, p. 14). On non-O&C, public domain lands in the planning area subject to FLPMA, the FLPMA requires, in part, that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values...that will provide food and habitat for fish and wildlife and domestic animals...and outdoor recreation and human occupancy and use” (43 USC 1701 [Sec. 102.a.8]). In 14 | The FLPMA recognizes the Nation's

need for domestic sources of minerals, food, timber, and fiber from the public lands” (43 USC 1701 [Sec. 102.a.12]).

The BLM developed a range of alternatives that responded to the purpose need for the RMP revision (PRMP/FEIS, p. 5). Through the analysis process the BLM determined that resource values would be protected while also providing a sustained yield of timber, contrary to the protestor’s assertion. For example, the hydrology analysis determined that, any measurable increases in stream temperature would be avoided, cause less than 1 percent of the decision area to be susceptible to peak flow increases, and cause less than 1 percent of the Harvest Land Base to be susceptible to landslides (PRMP/FEIS, p. 369). For wildlife species, the analysis determined that the Proposed RMP would lead to an increase in habitat for a majority of Bureau Sensitive, Bureau Strategic, Survey and Manage wildlife species, and landbird focal species in 50 years (PRMP/FEIS, p. 830). Additionally, the analysis determined that the PRMP will provide a wide variety of benefits that will be experienced by the surrounding communities. These benefits may be broadly understood as market (e.g., revenue generated from commodity uses of land, such as timber) and non-market in nature (e.g., support of cultural, spiritual, and aesthetic values) (PRMP/FEIS, p. 585 and 590). Contrary to the assertions, the BLM is not promoting a timber heavy interpretation of the O&C Act and the analysis has not shown that the PRMP/FEIS will degrade resources.

...misreading the law...and determining that there is unavoidable conflict between FLPMA and the O&C Act...

The BLM has not misread the O&C Act. The FLPMA specifically provides that if there is any conflict between its provisions and the O&C Act related to management of timber resources or the disposition of revenues from the O&C lands and resources, the O&C Act prevails (i.e., takes precedence) (43 USC 1701 note (b)) (PRMP/FEIS, p. 6). Contrary to the protestors assertion the BLM has not determined that there is unavoidable conflict between FLPMA and the O&C Act.

...failing to avoid/minimize salvage logging because it will violate the O&C Act mandate to protect watersheds and water flow...

In Appendix B, Management Objective and Direction, the PRMP/FEIS prohibits timber salvage in Riparian Reserves, except when necessary to protect public safety, or to keep roads and other infrastructure clear of debris (PRMP/FEIS, p. 1117). In addition, the Riparian Reserve management along all streams would ensure that salvage harvest in the Harvest Land Base, like green tree harvest in the Harvest Land Base, would have no effect on ESA-listed fish (PRMP/FEIS, p. 1862). Specific Best Management Practices, designed to meet water quality goals, apply to fire and fuels management actions, including those for fire restoration and rehabilitation (USDI BLM 2015, pp. Appendix I and PRMP/FEIS, p. 1903). Salvage logging outside of the Riparian Reserve would have the same effects on riparian and aquatic habitat as green tree harvest. The analysis did specifically include post-fire salvage harvest in the vegetation modeling (USDI BLM 2015, pp. 98–100). Under all alternatives, the inner zone of the Riparian Reserve would provide effective sediment filtration and ensure that upslope timber harvest would not result in sediment delivery to streams (USDI BLM 2015, p. 317) (PRMP/FEIS, p. 1032). For the reasons stated above, BLM’s authorization of salvage logging within the Harvest Land Base will be carried out in a manner that achieves the purposes of the

O&C Act, including the selling, cutting, and removal of timber consistent with the principles of sustained-yield in a manner that protects watersheds.

As noted above, to achieve the purposes of the O&C Act, the BLM exercises its discretion to determine how best to achieve sustained-yield timber production over the long term and avoid limitations on timber production in a manner that protects watersheds, regulates stream flow, and contributes to the economic stability of local communities and industries, and provides recreational facilities (PRMP/FEIS, p. 6). For the reasons stated above the Protesting Parties argument without merit and should be rejected.

Endangered Species Act (ESA)

Issue Number: PP-OR-RMPforWOr-16-12-103

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM provides very little analysis of the significant portion of this species' population south of Highway 20. In fact this portion of the population is critical to the long-term persistence of the species because the FWS determined that regardless of the conservation measures put into place for the species north of Highway 20, the existing vole population north of the Siuslaw will fail. Therefore, protection, survey, and monitoring of the red tree vole is especially needed in the rest of the species range in Oregon. Neglecting this significant portion of the species' range and failing to take a hard look at the impacts of the PRMP on it and the potential for these impacts to contribute to future listing is a violation of NEPA and contrary to law.

Issue Number: PP-OR-RMPforWOr-16-12-15

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: By attempting to back out of the Northwest Forest Plan, BLM also is violating its affirmative conservation duties under ESA § 7(a)(1) as discussed elsewhere in this protest. In addition, consultation under ESA § 7(a)(2) must look at effects of the agency action in combination with other on-going federal actions and the dismantling of the Northwest Forest Plan.

Issue Number: PP-OR-RMPforWOr-16-12-95

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM Failed to Take a Hard Look at Potential Listing for Survey and Manage Species Due to the Elimination of Survey and Manage and Riparian Reserve Reduction BLM cannot rationally conclude that they will be able to meet their stated purpose of providing increase certainty to a sustainable level of timber production if they are leaving themselves vulnerable to disruption from new listings as a result of reducing the protections for at-risk but unlisted species afforded by survey and manage. BLM has failed to review and discuss all of the FWS and NMFS decision to not list species that rely, at least in part, on the Northwest Forest Plan and its land allocations, including inter alia, wide riparian reserves, survey and manage, and the 80-year age limit for logging in LSRs.

Issue Number: PP-OR-RMPforWOr-16-39-3

Organization: Benton Forest Coalition

Protester: Reed Wilson

Issue Excerpt Text: By failing to sufficiently analyze the detrimental effects of climate change on spotted owl populations...the BLM is in violation of the ESA.

Issue Number: PP-OR-RMPforWOr-16-12-77

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Consultation procedures identified in PRMP are not adequate for protecting Coho salmon critical habitat because BLM routinely decides that mining operations such as Reelfoot NOI have no impact on listed species.

Issue Number: PP-OR-RMPforWOr-16-12-78

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director also was wrong for not conducting section 7 consultation for ongoing suction dredging for this PRMP decision. FEIS/PRMP at 1144. The management direction for mining in critical habitat is not adequate. FEIS/PRMP at 1144. BLM currently has no prohibitions on mining that harms Coho spawning habitat. Thus, there needs to be section 7 consultation on mining whether it is “proposed” or not.

Issue Number: PP-OR-RMPforWOr-16-12-176

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The State Director’s decision to authorize grazing on 137 grazing allotments covering 355,326 acres, FEIS/PRMP at 479; FEIS, Appendix L, also is illegal because the BLM did not conduct Section 7 consultation for this programmatic decision with NMFS and USFWS about conservation measures to mitigate consequences to ESA listed species. The State Director’s decision is also wrong because the PRMP fails to identify a schedule for improving 12 allotments that do not meet rangeland standards. FEIS/PRMP at 485. The State Director decision is also wrong because the PRMP fails to identify a

time table for needed rangeland health assessments on 66 allotments totaling 128,551.

Issue Number: PP-OR-RMPforWOr-16-13-16

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: Consultation procedures identified in the PRMP are not adequate for protecting Coho salmon critical habitat because BLM routinely decides that mining operations such as Reelfoot NOI have no impact on listed species.

Issue Number: PP-OR-RMPforWOr-16-13-17

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director was wrong for not conducting section 7 consultation for ongoing mining for this PRMP decision (FEIS 1144). The Secretary of the Interior withdrew the Records of Decision for the 2008 FEISs in July 2009, because the approval of the Records of Decision was in 'legal error' because the BLM had not conducted Section 7 consultation under the ESA. FEIS:1909.

Issue Number: PP-OR-RMPforWOr-16-13-20

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director decision to open up existing routes for motorized use on hundreds of thousands of

acres is wrong because the BLM did not consult with NMFS and USFWS about consequences to listed fishes and birds. The State Director decision to identify dozens of ERMA's (Appendix 0) covering hundreds of thousands of acres for developed off road motorized use is wrong because the BLM did not consult with NMFS and USFWS about consequences to listed fishes and birds from these designations that will likely trigger travel management plans for development of potentially harmful off road motorized use. We speculate that the February 2016 Biological Assessment provided to USFWS and NMFS did not include descriptions of environmentally damaging changes in motorized use designations, spatial extent of specific ERMA's overlapping Riparian Reserves and LSR, and subsequent off road motorized development intentions for ERMA's.

Issue Number: PP-OR-RMPforWOr-16-13-21

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director decision to authorize grazing on 137 grazing allotments covering 355,326 acres (FEIS:479; Appendix L) is wrong because the BLM did not conduct Section 7 consultation for this programmatic decision with NMFS and USFWS about conservation measures to mitigate consequences to ESA listed animals.

Issue Number: PP-OR-RMPforWOr-16-13-1

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director's decision to reduce existing 2 tree width Riparian reserves for fish streams to 1 tree width is wrong because a 2 tree width Riparian Reserve is needed for critical habitat streams of ESA listed salmonids. A one tree width riparian reserve is an inadequate contribution to the conservation and recovery of threatened and endangered species and inadequate to provide clean water in watersheds.

Issue Number: PP-OR-RMPforWOr-16-13-15

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The mining law as implemented by the Medford District is not compatible with purpose and need of the RMP to contribute to the recovery of listed species and provide clean water. Mineral withdrawal of existing 2 tree riparian reserves, floodplains, and terraces is warranted to contribute to the recovery of listed species and provide clean water.

Issue Number: PP-OR-RMPforWOr-16-13-19

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director's decision would "legalize" unlimited off road motorized use of all classes of motor vehicles on hundreds of miles of "existing" user created routes and abandoned logging routes. The proposed authorization of motorized use of (existing) user created routes is certain to further exacerbate serious sedimentation of headwater streams and critical stream habitat. Many of these user

created routes and abandoned logging routes are in Riparian Reserves. The State Director's decision is in direct conflict with recovery of listed species and maintaining clean water.

Issue Number: PP-OR-RMPforWOr-16-13-27

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The monitoring plan is inadequate to ensure that ESA species habitat and populations are being maintained/recovered both in the short-term and long-term. This is important because timber harvest, roads, livestock grazing, and mining are identified as threats to listed species in planning area. A large timber harvest program and a large livestock grazing program affecting thousands of acres and hundreds of streams must have a large monitoring program to detect outcomes not predicted in the FEIS.

Issue Number: PP-OR-RMPforWOr-16-13-27

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The monitoring plan is inadequate to ensure that ESA species habitat and populations are being maintained/recovered both in the short-term and long-term. This is important because timber harvest, roads, livestock grazing, and mining are identified as threats to listed species in planning area. A large timber harvest program and a large livestock grazing program affecting thousands of acres and hundreds of streams must have a

large monitoring program to detect outcomes not predicted in the FEIS.

Issue Number: PP-OR-RMPforWOr-16-13-8

Organization: Klamath-Siskiyou Wildlands

Protester: Joseph Vaile

Issue Excerpt Text: The State Director's decision to allow any sized tree to be commercially removed as 'by-product' from riparian reserves is wrong because all trees 20" DBH and greater are needed to maintain and restore critical habitat along streams of ESA listed salmonids and these large trees function to provide clean water in watersheds.

Issue Number: PP-OR-RMPforWOr-16-14-3

Organization: American Bird Conservancy

Protester: Steve Holmer

Issue Excerpt Text: Marbled Murrelet Habitat Protection Reduced by 98%.

Issue Number: PP-OR-RMPforWOr-16-14-4

Organization: American Bird Conservancy

Protester: Steve Holmer

Issue Excerpt Text: The proposed RMP states 13 Murrelet sties will be taken, and increased predation is likely to result from the reduced buffers being provided and the application of clearcutting which will increase fragmentation. 34,362 acres of nesting habitat are in the harvest land base, including 3,425 acres of high quality habitat and provides the least amount of core habitat (38%) of any alternative analyzed. A significant amount of Murrelet critical habitat, which is designated to protect and

provide for recovery, is included in the harvest land base. Of the 39,718 acres of critical habitat, 36% is currently nesting habitat, and 3% is high-quality.

The remainder are younger forests that Murrelet recovery requires be allowed to become suitable nesting habitat. However, the plan (p. 907) calls for logging 1-3% of Murrelet nesting habitat within critical habitat per decade for the next five decades; essentially logging 100% of these younger forests. The BLM statement on p. 907 that timber harvest would not affect the functionality of critical habitat is therefore contradicted by this plan for extensive logging of 34,000 acres of Murrelet critical habitat.

Issue Number: PP-OR-RMPforWOr-16-14-8

Organization: American Bird Conservancy

Protester: Steve Holmer

Summary:

The Endangered Species Act (ESA) does not:

- take precedence over the O&C Act;
- repeal or amend the O&C Act and does not provide a legal basis for no-harvest reserves on suitable commercial forest lands; and
- repeal O&C.

Therefore, the BLM is wrong to manage O&C lands for objectives other than sustained yield timber production

Response:

The BLM has appropriately reconciled the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (“O&C Act”) with other laws. The BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act (“ESA”, 16 USC § 1531 et seq.), the National Environmental Policy Act (“NEPA”, 42 USC § 4321 et seq.), and the Clean Water Act (33 USC § 1251 et seq.). The BLM must comply with the O&C Act as well as other environmental statutes, including NEPA and the ESA. *Seattle Audubon Soc’y v. Lyons*, 871 F. Supp. 1291, 1311 (W.D. Wash. 1994), aff’d sub nom. *Seattle Audubon Soc’y v Moseley*, 80 F.3d 1401 (9th Cir. 1996); *Pac. Rivers Council v. Shepard*, No. 11-cv-442, slip op. at 9 (D. Or. Mar. 20, 2012). When two (or more) statutes apply to a federal undertaking, the agency must “give effect to each if [they] can do so

Issue Excerpt Text: On page 1112, the direction header is to “Maintain marbled Murrelet habitat”, but then states that activities such as fuels reduction, bug control, and wildfire management can remove Murrelet habitat. This appears to be contradictory and in violation of the Endangered Species Act which prohibits the take of endangered species.

Issue Number: PP-OR-RMPforWOr-16-31-5

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: The proposed plan puts at risk recovering salmon and steelhead as well as other wildlife populations that rely on clear, cool waters and it increases risks to the quality of drinking water.

while preserving their sense and purpose” (*Watt v. Alaska*, 451 U.S. 259, 264 (1981); *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981)).

As noted above, the BLM has consistently interpreted the O&C Act as compatible with other federal environmental laws such as the Endangered Species Act. In meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion to determine how to manage the forest (PRMP/FEIS, p. 4).

Harvesting timber on a sustained-yield basis for the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act and 43 USC 1181a et. seq.) is required under the O&C Act. Harvesting timber on a sustained-yield basis ensures that the BLM will achieve the purposes of the O&C Act, which include continuing to be able to provide, over the long term, a sustained volume of timber within the management direction in the RMP (PRMP/FEIS, p. 6).

Through the RMPs, the BLM will determine and declare the annual productive capacity for sustained yield timber production. The determination of the annual productive capacity includes compliance with other laws and consideration of the objectives, land use allocations, and management direction of the RMPs, which affect the amount of timber that each of the sustained yield units can produce (PRMP/FEIS, p. 4).

Declining populations of species now listed under the Endangered Species Act (16 USC 1531 et seq.) have caused the greatest reductions and instability in the BLM’s supply of timber in the past. Any further population declines of listed species or new species listings would likely lead to additional reductions in timber harvest. Contributing to the conservation and recovery of listed species is essential to delivering a predictable supply of timber (PRMP/FEIS, p. 6).

The BLM recognizes that providing large, contiguous blocks of late successional forest and maintaining older and more structurally-complex multi-layered conifer forests are necessary components of the conservation and recovery of the northern spotted owl. Providing clean water is essential to the conservation and recovery of listed fish, and a failure to protect water quality would lead to restrictions that would further limit the BLM’s ability to provide a predictable supply of timber (PRMP/FEIS, p. 6).

The BLM interprets the O&C Act as compatible with the Endangered Species Act, and, as noted above, to achieve the purposes of the O&C Act, the BLM exercises its discretion to determine how best to achieve sustained-yield timber production over the long term and avoid future limitations on timber production (PRMP/FEIS, p. 6). The BLM exercised this discretion as described in the 6 objectives listed under the purpose and need for this RMP revision (PRMP/FEIS, pp. 6-10). For the reasons stated above, the Protesting Parties argument is without merit and should be rejected.

Northwest Forest Plan – General

Issue Number: PP-OR-RMPforWOr-16-12-11

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The FEIS/PRMP fails to disclose the effects of the proposed action on the Northwest Forest Plan.

Issue Number: PP-OR-RMPforWOr-16-12-12

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Two key assumptions behind the biological analysis of the Northwest Forest Plan were that (1) “[r]iparian and Late-Successional Reserves (LSRs) will retain reserve status and will not be available for timber production other than as provided in Alternative 9” and (2) “[a]lternative 9 applies to Forest Service and BLM lands; all future actions on these lands would be consistent with Alternative 9, as adopted in the Record-of-Decision (ROD).” The PRMP described in the FEIS is contrary to both of these assumptions.

Issue Number: PP-OR-RMPforWOr-16-12-13

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: Under NEPA, federal agencies are required to examine in an EIS the cumulative impacts of proposed actions – that is, those impacts that result from the incremental impact of the action when added to other the past, present, and reasonably foreseeable future actions. By considering action alternatives that would change

BLM’s land management, the agency is considering pulling out of the multi-agency Northwest Forest Plan. BLM cannot do this without assessing and disclosing how its actions will combine with those of other federal agencies to affect both its own actions and continued implementation of the Northwest Forest Plan. The FEIS/PRMP does not include such an analysis or provide a rational or legal explanation of why one is not required.

Northwest Forest Plan – Aquatic Conservation Strategy

Issue Number: PP-OR-RMPforWOr-16-11-1

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM RMP/EIS eliminates full provisions of the ACS; including all relevant standards and guidelines. BLM’s Resource Management Plan Final EIS (RMPEIS) eliminates the full provisions of the Aquatic Conservation Strategy (ACS) of the Northwest Forest Plan, and the RMPEIS does not evaluate the full extent or significance of the impacts caused by the loss of these provisions to ESA listed aquatic species, and to aquatic and riparian ecosystems as a whole.

Issue Number: PP-OR-RMPforWOr-16-11-19

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The BLM has not explained the scientific basis for eliminating the Key Watershed network or designations.

Issue Number: PP-OR-RMPforWOr-16-11-2

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The NWFP ROD specifically states that “Management actions that do not maintain the existing condition or lead to improved conditions in the longer term would not “meet “the intent of the Aquatic Conservation Strategy and thus, should not be implemented (NWFP ROD, page B-10). These critical, precautionary restrictions have all been eliminated in the Proposed Action, across BLM lands in Western Oregon, and there is no meaningful examination in the RMPEIS of the impacts and consequences of doing so.

Issue Number: PP-OR-RMPforWOr-16-11-6

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The analysis of impacts of all action alternatives in comparison to the No Action alternative does not examine the significance and widespread impacts of the removal of these existing project and watershed-specific restrictions by all action alternatives including the Proposed Action.

Issue Number: PP-OR-RMPforWOr-16-11-9

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: There is no scientific basis or justification for the changes in management objectives and direction from those already contained and well justified in the NWFP/ACS (No Action alternative).”

Issue Number: PP-OR-RMPforWOr-16-12-59

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM has not adequately explained the radical shift from wide riparian reserves to meet broad purposes to narrow riparian reserves to meet narrow purposes. Wider stream buffers were adopted in 1994 to provide demographic support and dispersal for terrestrial species that were ESA-listed as well as for species that could become listed. Recovering ESA-listed species and avoiding new listing is required by the laws applicable to the BLM and helps meet BLM’s stated objectives to make timber harvest more predictable and to stabilize communities. Since spotted owls and marbled Murrelet use stream side forests disproportionately compared to uplands, BLM cannot conclude that adding reserve acres in the uplands will compensate for the loss of more valuable habitat near streams. The upland forests, while important, are relatively less important for northern spotted owl, marbled Murrelet, as well as several stream-associated amphibians and mollusks and other invertebrates that could be listed if BLM shrinks riparian reserves as proposed.

The PRMP is thus arbitrary and capricious. BLM says that the EIS “analysis demonstrates that, ... the action alternatives would result in effects that are equally protective of ESA-listed fish and water quality as the No Action alternative.” This is simply not true with respect to a variety of other wildlife (not just fish) that BLM has refused to take a hard look at.

Issue Number: PP-OR-RMPforWOr-16-31-4

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: We are alarmed that streamside buffers and Riparian Reserves have been reduced by roughly half in the RMP. The BLM did not adequately rationalize this extreme departure from the Aquatic Conservation Strategy (ACS) under the Northwest Forest Plan.

Northwest Forest Plan – Late-Successional Reserve

Issue Number: PP-OR-RMPforWOr-16-12-89

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM’s assertion in the FEIS/PRMP that the distribution of structural stages in the decision area in 50 years would be within the range of the average historic conditions is highly questionable. BLM must explain this conclusion in light of the analysis and conclusions in the NWFP. In 1993-94, the authors of the FEMAT and the NWFP FSEIS considered a range of alternatives and concluded that none of the alternatives

would ensure attainment of a functional interconnected late-successional old-growth ecosystem within 100 years, because the reserves are so impacted by past management that they may need 200 or more years to regrow and recover. BLM has not explained why this perspective is either no longer accurate or does not apply to its lands.

Northwest Forest Plan – Riparian Reserve

Issue Number: PP-OR-RMPforWOr-16-12-54

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 118, FEIS/PRMP at 1896, BLM asserts that watersheds will be adequately maintained in the face of climate change (and likely increased storm intensity) even after riparian reserves have been cut in half. This is not supported by the evidence, and indeed BLM sites nothing for this proposition. The EIS does not take a hard look at the effects of reduced stream protection and loss of watershed integrity in the face of increase climate stress and fails to take a hard look the cumulative effects of both climate change and reduced stream buffers.

Issue Number: PP-OR-RMPforWOr-16-12-56

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM failed to take a hard look at the adverse effects of shrinking riparian reserves and increasing discretion to log near streams

There are two main problems with the FEIS/PRMP decision to reduce stream buffers. First, the spatial extent of the buffers is reduced without any compelling justification, and second, the standards & guidelines governing activities in the buffers are weakened which will allow many activities to degrade conditions that require careful conservation.

Issue Number: PP-OR-RMPforWOr-16-12-57

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: In Response to Comments 196, FEIS/PRMP at 1926, BLM says “The commenter mistakenly implies that there would be “increased logging in riparian areas” under the alternatives. All action alternatives would have less Riparian Reserve thinning than the No Action alternative and most alternatives would have less thinning than the BLM has been implementing in the past two decades.” BLM fails to recognize that by cutting riparian reserves in half, and re-allocating the second site-potential tree to the Harvest Land Base (in many cases), and allowing (if not encouraging) more ground disturbing activity within this area, all the action alternatives will allow extensive harvest in areas that were previously protected as riparian reserves. This is a huge oversight and a misleading perspective that permeates the analysis in the EIS and renders it arbitrary.

Issue Number: PP-OR-RMPforWOr-16-12-59

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM has not adequately explained the radical shift from wide riparian reserves to meet broad purposes to narrow riparian reserves to meet narrow purposes. Wider stream buffers were adopted in 1994 to provide demographic support and dispersal for terrestrial species that were ESA-listed as well as for species that could become listed. Recovering ESA-listed species and avoiding new listing is required by the laws applicable to the BLM and helps meet BLM’s stated objectives to make timber harvest more predictable and to stabilize communities. Since spotted owls and marbled Murrelet use stream side forests disproportionately compared to uplands, BLM cannot conclude that adding reserve acres in the uplands will compensate for the loss of more valuable habitat near streams. The upland forests, while important, are relatively less important for northern spotted owl, marbled Murrelet, as well as several stream-associated amphibians and mollusks and other invertebrates that could be listed if BLM shrinks riparian reserves as proposed. The PRMP is thus arbitrary and capricious. BLM says that the EIS “analysis demonstrates that... the action alternatives would result in effects that are equally protective of ESA-listed fish and water quality as the No Action alternative.” This is simply not true with respect to a variety of other wildlife (not just fish) that BLM has refused to take a hard look at.

Issue Number: PP-OR-RMPforWOr-16-12-86

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM Failed to Consider the Benefits of Wide Riparian Reserves for Northern Spotted Owls
BLM failed to take a hard look at the value of conserving wide riparian reserves for

spotted owls and the adverse effects of shrinking riparian reserves. The 2011 Revised Recovery Plan for the Northern Spotted Owl showed that “slope position” was an important variable in the all the models used to predict spotted owl habitat suitability. Slope position seems to be relatively more important in the warmer provinces, which indicates that as the climate warms protecting lower slopes will likely be increasingly important in all provinces. See Appendix C of the U.S. Fish and Wildlife Service, Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) (2011) (U.S. Fish and Wildlife Service, Portland, Oregon xvi + 258 pp.).

Issue Number: PP-OR-RMPforWOr-16-12-98

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM fails to adequately recognize that (1) BLM over-estimates the effectiveness of reserves that are not currently functional and won’t be for decades, (2) BLM over-estimates the effectiveness of protecting generic habitat that may or may not be occupied; protecting occupied sites is disproportionately important; (3) BLM fails to account for the disproportionate effects of cutting riparian reserves in half because many rare and uncommon species disproportionately rely on near-stream habitat; and (4) BLM erroneously asserts that logging in reserves will be limited and benign.

Northwest Forest Plan – Survey & Manage

Issue Number: PP-OR-RMPforWOr-16-12-89

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM’s assertion in the FEIS/PRMP that the distribution of structural stages in the decision area in 50 years would be within the range of the average historic conditions is highly questionable. BLM must explain this conclusion in light of the analysis and conclusions in the NWFP. In 1993-94, the authors of the FEMAT and the NWFP FSEIS considered a range of alternatives and concluded that none of the alternatives would ensure attainment of a functional interconnected late-successional old-growth ecosystem within 100 years, because the reserves are so impacted by past management that they may need 200 or more years to regrow and recover. BLM has not explained why this perspective is either no longer accurate or does not apply to its lands.

Issue Number: PP-OR-RMPforWOr-16-12-91

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM cannot rely on the fact that a large fraction of the landscape is in reserve land allocation, because (a) a large fraction of the reserves are covered by early and mid-seral forests that do not provide habitat for species of concern and so many reserved forests may not be occupied by rare and uncommon species; and, (b) old forests in reserves are highly fragmented, so rare species may not persist over the long term even where they currently exist. The FEIS does not adequately disclose the ecological consequences of increased logging in the absence of the survey and manage program, nor does the FEIS explain how BLM can justify elimination of the survey and manage program now, or why

the agency's proposed replacement will afford the same level of protection for unlisted species as survey and manage.

Issue Number: PP-OR-RMPforWOr-16-12-94

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: BLM's departure from survey and manage is not justified by this rationale because BLM has its own legal duties both to protect at risk species and to avoid future ESA listings. BLM has failed to provide an analysis that articulates the legal basis for a lower level of protection for admittedly rare and at-risk species on BLM lands.

Issue Number: PP-OR-RMPforWOr-16-12-99

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM's analysis relies upon the development of hypothetical future structurally complex older forests to offset the very real and immediate impacts associated with abandoning the NWFP's survey and manage requirements. These time-differential related impacts go unanalyzed in the FEIS and the BLM has failed to take a hard look at the immediate impacts to these various species. The FEIS/PRMP indicates that the BLM intends

to rely upon projected increases in hypothetical habitat for Bureau Sensitive Species (BSS) and (former) survey and manage species rather than protecting the actual known sites where these species occur. Trading occupied actual habitat for hypothetical future habitat is arbitrary and capricious.

Issue Number: PP-OR-RMPforWOr-16-12-95

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM Failed to Take a Hard Look at Potential Listing for Survey and Manage Species Due to the Elimination of Survey and Manage and Riparian Reserve Reduction. BLM cannot rationally conclude that they will be able to meet their stated purpose of providing increase certainty to a sustainable level of timber production if they are leaving themselves vulnerable to disruption from new listings as a result of reducing the protections for at-risk but unlisted species afforded by survey and manage. BLM has failed to review and discuss all of the FWS and NMFS decision to not list species that rely, at least in part, on the Northwest Forest Plan and its land allocations, including inter alia, wide riparian reserves, survey and manage, and the 80-year age limit for logging in LSRs.

Summary:

The BLM has violated NEPA in the Western Oregon PRMP/FEIS by failing to justify the removal or alterations of the following key components of the Northwest Forest Plan:

- Aquatic Conservation Strategy;
- Late-Successional Reserve;
- Riparian Reserve; and
- Survey and Manage.

Response:

The BLM has properly justified the agency's purpose and need in the PRMP/FEIS. The NEPA document must briefly specify the underlying purpose and need to which the agency is responding (40 CFR 1502.13). Agencies have considerable discretion to define the purpose and need of a project (*City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986)). The BLM must choose purposes that are reasonable (*Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). Agencies, in determining what a reasonable purpose is, must look at the factors relevant to the definition of the purpose (e.g., Congressional directives, statutory authority, the specific needs and goals of parties involved in the sanction of a specific plan) (*Id*) (internal citations omitted).

Northwest Forest Plan

The Northwest Forest Plan itself is not a statute or regulation to which the BLM must comply. It did not change the authority of the BLM, provided under the FLPMA and its promulgating regulations, for amending or revising RMPs. The Northwest Forest Plan was a coordinated, multi-agency amendment to the then- current RMPs of the BLM and forest plans of the U.S. Forest Service. The Secretaries and the agencies retained authority provided by statutes and regulations to revise these plans in the future. PRMP/FEIS, p. 20.

The protesters object to the removal or alteration of several components of Northwest Forest Plan from the Proposed RMP. The Purpose and Need statement describes why the BLM is revising the 1995 RMPs and what outcomes the BLM intends the RMPs to achieve (PRMP/FEIS, p. 5). The BLM has discretion to define the purpose and need for a project so long as the purpose is reasonable. The BLM determined what a reasonable purpose was by reviewing relevant directives, statutory authorities, and the specific needs and goals of the parties involved (PRMP/FEIS, pp. 5-10, 1840). Specifically, the BLM adopted a purpose and need that is consistent with the agency's discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes (PRMP/FEIS, pp. 12-15, 1845).

The BLM addressed the relationship between the Northwest Forest Plan and this RMP revision in the PRMP/FEIS. As explained in the PRMP/FEIS, the purpose and need for this RMP revision differs from the purpose and need for the Northwest Forest Plan and the 1995 RMPs (PRMP/FEIS, pp. 20-21, 1841).

Additionally, the BLM did analyze the other federal agencies' land management in the planning area (PRMP/FEIS, pp. 1850-1851). The BLM's analysis assumed that the U.S. Forest Service would continue to manage their lands within the analysis area consistent with their existing plans (i.e., the Northwest Forest Plan). Thus, the analysis in the PRMP/FEIS presents a cumulative analysis of the BLM management of BLM-administered lands under each alternative and the U.S. Forest Service managing of National Forests under the Northwest Forest Plan. Whether the U.S. Forest Service would need to conduct additional analysis to determine the continued validity of its current plans, and whether the U.S. Forest Service would continue to elect to manage National Forests under the Northwest Forest Plan in the future are questions beyond the scope of this RMP revision process (PRMP/FEIS, p. 1851).

Aquatic Conservation Strategy

Protesters object to the broad categories of the Aquatic Conservation Strategy being excluded from the PRMP/FEIS in their entirety. The Northwest Forest Plan included the Aquatic Conservation Strategy to fulfill nine broad and aspirational objectives. As stated previously, the purpose and need for this RMP revision differs from the purpose and need for the Northwest Forest Plan and reflects BLM's determination that it can achieve the goals of the O&C Act and other applicable statutes without the Aquatic Conservation Strategy in its entirety as constituted in the Northwest Forest Plan. PRMP/FEIS, pp. 21-22. Therefore, the management objectives for the Riparian Reserve in the PRMP/FEIS do not explicitly include the nine Aquatic Conservation Strategy objectives as defined in the Northwest Forest Plan.

However, the management objectives and management direction of the Proposed RMP provide a comparable overall management approach to resources (PRMP/FEIS, Appendix W, pp. 1842-1845). The Proposed RMP addresses all four components of the Aquatic Conservation Strategy: Riparian Reserve, Key Watershed, Watershed Analysis, and Watershed Restoration. For each of these components, the Proposed RMP has updated or modified the component in light of the purpose and need for the RMP revision, the management objectives in the Proposed RMP, new scientific information, and the BLM's experience in implementing the 1995 RMPs (PRMP/FEIS, pp. 1844-1845).

The Proposed RMP allocated a Riparian Reserve along all streams, wetlands, and water bodies, with management objectives related to fish habitat and water quality (PRMP/FEIS, p. 23). The Riparian Reserve would be delineated through project implementation. The Proposed RMP includes specific management objectives and management direction for the Riparian Reserve. PRMP/FEIS, pp. 42, 1104, 1117-1129. The BLM addresses the concept of Key Watersheds in the Proposed RMP by defining three classes of subwatersheds and varying the Riparian Reserve design and management based on the importance of the watershed to ESA-listed fish (PRMP/FEIS, pp. 23 and 1861).

The Proposed RMP does not require a specific watershed analysis procedure; however, the BLM will compile watershed-scale information on aquatic and riparian resources, including identifying resource conditions, watershed processes, risks to resources, and restoration opportunities (PRMP/FEIS, pp. 24, 2004). This compilation does not constitute a separate or additional analysis beyond what the BLM would provide for NEPA or ESA compliance for implementation actions (*Id.*). The Proposed RMP includes management direction for watershed restoration similar to the watershed restoration described in the Northwest Forest Plan (*Id.*). Watershed restoration will be an integral part of a program to contribute to the conservation and recovery of ESA-listed fish and protect water quality (PRMP/FEIS, p. 2005). In determining priorities for watershed restoration, the BLM will use the BLM Western Oregon Aquatic Restoration Strategy (*Id.*).

Additionally, the Proposed RMP includes a monitoring strategy to determine whether the BLM is following the RMP management direction (implementation monitoring) and to verify if the implementation of the RMP is achieving plan-level desired results (effectiveness monitoring)

(PRMP/FEIS, pp. 1807, 1811-1812). Specific to the Riparian Reserve, the basic question is whether the implementation of the RMP is maintaining and restoring aquatic and riparian ecosystems to desired conditions on Federal lands in the planning area (*Id.*).

Late-Successional Reserve

The PRMP/FEIS explains the role of the Late-Successional Reserve in meeting the purpose and need for this RMP revision. The Late-Successional Reserve would provide for large blocks of structurally-complex forest to support threatened and endangered species. The analytical methodology and data in the PRMP/FEIS is sound and supports the purpose and need for this RMP revision. The BLM is not required to rely on analysis completed during previous land use plan revisions. As stated in the PRMP/FEIS, Appendix W, the analysis supporting the Northwest Forest Plan was largely based on information in the FEMAT Report, which addressed a very large and diverse assessment area. In contrast, the PRMP/FEIS contains detailed information on conditions within the much smaller planning area and includes quantified modeling and analysis specific to the alternatives in the PRMP/FEIS. The BLM based its analysis on detailed information that was not available during previous plan revisions and presents objective, reproducible analytical conclusions. PRMP/FEIS, p. 1840. The protesters object to the information BLM relied on in its presentation and analysis of the Late-Successional Reserves, but do not demonstrate that the BLM violated NEPA in the development and justification of the purpose and need.

Riparian Reserve

Consistent with the purpose and need for this RMP revision, which includes providing clean water conservation and recovery of threatened and endangered species, the BLM established management objectives for the Riparian Reserve that focused on fish habitat and water quality (PRMP/FEIS, pp. 7,9, 91 and 1845). As stated above, this is in contrast to the nine, broad objectives of the Aquatic Conservation Strategy of the Northwest Forest Plan, based on the U.S. Forest Service's organic statute and implementing regulation. For this RMP revision, the BLM adopted a purpose and need that is consistent with the agency's discretion and obligations under the FLPMA, O&C Act, ESA, Clean Water Act, and other applicable statutes (PRMP/FEIS, pp. 12-15). The BLM based the management objectives for the Riparian Reserve in the action alternatives and the Proposed RMP on this purpose and need. Management Objectives and Management Direction are more explicit than those within the Northwest Forest Plan. Where the Northwest Forest Plan allocated interim Riparian Reserve widths, the Proposed RMP provides specific definitions of the Riparian Reserve, which varies by class of watershed (PRMP/FEIS, p. 23). The protesters object to the management direction for the Riparian Reserve in the Proposed RMP, but do not demonstrate that the BLM violated NEPA in the development and justification of the purpose and need.

Survey and Manage

Protesters object to Survey and Manage being excluded from the PRMP/FEIS in its entirety. The purpose and need for this RMP revision differs from the purpose and need for the Northwest Forest Plan, and reflects the BLM's determination that it can achieve the goals of the O&C Act and other applicable statutes without the Survey and Manage measures (PRMP/FEIS, p. 21). The purpose of this RMP revision includes contributing to the conservation and recovery of threatened and endangered species and also includes maintaining a network of large blocks of

forest to be managed for late-successional forests and maintaining older and more structurally-complex multi-layered conifer forests (PRMP/FEIS, p. 22).

Surveys and known site management are some of the primary components of the Survey and Manage measures. The BLM incorporated some components of Survey and Manage into the Proposed RMP by providing direction to conduct pre-disturbance surveys and known site management (habitat areas) for red tree voles in the North Oregon Coast DPS north of Highway (PRMP/FEIS, pp. 919 and 1979).

The BLM has other management tools besides allocating reserves for conserving species that are associated with late-successional and old-growth forests. Although the species viability goal of the Northwest Forest Plan is not part of the purpose for this RMP revision, the BLM would provide management for Survey and Manage species that are also Bureau Sensitive species, consistent with BLM policy (PRMP/FEIS, p. 1849).

Each alternative and the Proposed RMP would more than sufficiently address maintenance of older and more structurally-complex forests, without the need for additional mitigation like that provided by Survey and Manage. PRMP/FEIS, p. 22. Even if the habitat and site protection under the Proposed RMP were not sufficient to provide adequate habitat for Survey and Manage species, before such species could need listing under the Endangered Species Act, the BLM would be able to include such species on the BLM sensitive species list and provide necessary management to avoid the need for listing. Id. Survey and Manage is further addressed in Section 2.0 (FLPMA) of this report. The protesters object to the removal of Survey and Manage from the Proposed RMP, but not do demonstrate that the BLM violated NEPA in the development and justification of the purpose and need.

In conclusion, the BLM has complied with NEPA and has properly justified the agency's purpose and need for this RMP revision, which includes a change from the Aquatic Conservation Strategy, Late-Successional Reserve, Riparian Reserve, and Survey and Manage, as defined in the Northwest Forest Plan and 1995 RMPs. Additionally, the BLM has appropriately disclosed the relationship of the Northwest Forest Plan to the PRMP in this PRMP/FEIS. Components of the Northwest Forest Plan are not applicable to the purpose and need of this plan revision and, therefore, do not need to be included.

Clean Water Act

Issue Number: PP-OR-RMPforWOR-16-12-76

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The mining law as implemented by the Medford District is not

compatible with purpose and need of the RMP to contribute to the recovery of listed species and provide clean water. Mineral withdrawal of existing 2 tree riparian reserves, floodplains, and terraces is warranted to contribute to the recovery of listed species and provide clean water.

Summary:

Mining as implemented by the Medford District violates the Clean Water Act (CWA) and Endangered Species Act (ESA) in the Western Oregon PRMP/FEIS.

Response:

FLPMA requires that when preparing land use plans, the BLM must “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans”, such as the Clean Water Act (CWA) (FLPMA, Section 202(c)(8)). The Oregon Department of Environmental Quality (DEQ) and the United States Environmental Protection Agency (EPA) have the regulatory authority regarding implementation of the CWA in Oregon. The BLM has no specific regulatory authority related to use of water or enforcement of water quality laws.

The BLM, as a Federal agency, is required by Section 7 of the ESA to ensure that the BLM’s discretionary actions do not jeopardize the existence of a listed species, and do not destroy or adversely modify designated critical habitat (16 USC 1536(a)(2); 50 CFR 402.3; *Nat’l. Ass’n. of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666-67 (2007)). When a BLM action may affect a listed species or designated critical habitat, the BLM must consult with U. S. Fish and Wildlife (USFWS) and/or the NOAA National Marine Fisheries Service (NMFS) (16 USC 1536(a)(2)). If an agency determines through a finding in a Biological Assessment (BA) that a proposed action is likely to adversely affect listed species or designated critical habitat formal, consultation is required under (50 CFR 402.14(a)).

The PRMP/FEIS does not authorize any specific project that affects water quality. All specific projects implementing the PRMP/FEIS will be subject to additional analysis of possible effects to water, as appropriate, and must comply with the CWA. The BLM consulted with regulatory agencies consistent with Section 7 of the ESA (PRMP/FEIS, Chapter 4).

The purpose of the action includes continuing to comply with the CWA (33 USC 1251 *et seq.*), which directs the restoration and maintenance of the chemical, physical, and biological integrity of the nation’s waters (PRMP/FEIS, p. 9). The policy declaration in the FLPMA states that the BLM should manage the public lands in a manner that protects many resources and their values, including the water resource (43 USC 1701[a][8]) (*Id.*). FLPMA directs that land use plans

provide for compliance with applicable State and Federal air, water, noise, or other pollution control laws, standards, or implementation plans (43 USC 1712[c][8]).

The PRMP/FEIS will direct, through management direction, how the BLM will implement the mining program on all districts (PRMP/FEIS, Appendix B). That direction includes compliance with the CWA. For this RMP revision, the BLM adopted a purpose and need that is consistent with the agency's discretion and obligations under the FLPMA, O&C Act, ESA, CWA, and other applicable statutes. The BLM based the management objectives for the Riparian Reserve in the action alternatives and the PRMP on this purpose and need (PRMP/FEIS, p. 1845). Reserve areas help meet the BLM's obligations under the CWA and ESA. Further, the PRMP provides for compliance with the CWA and the ESA by:

- Protecting lands that have important resource values or substantial levels of investment by withdrawing them, where necessary, from the implementation of nondiscretionary public land and mineral laws (PRMP/FEIS, p. 1135).
- Requiring a Plan of Operations for mining proposals that the BLM determines would be likely to adversely affect federally proposed or listed threatened or endangered species or their proposed or designated critical habitat (PRMP/FEIS, p. 1144).
- Requiring proposals that require a Plan of Operations and are located within lands or waters known to contain federally proposed or listed threatened or endangered species or their proposed or designated critical habitat be governed by the standards in 43 CFR 3809 *et seq* (PRMP/FEIS, p. 1144).

The BLM prepared a BA discussing the proposed actions within the PRMP/FEIS, including the mining program, submitted the BA to the regulatory agencies, and will receive a Biological Opinion (BO) before the ROD is signed. See response to PP-OR-RMPforWOr-16-12-76 in Section 4.2.

The Western Oregon PRMP/FEIS conforms to the Clean Water Act and the Endangered Species Act.

Administrative Procedures Act

Issue Number: PP-OR-RMPforWOr-16-04-1

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The BLM has failed to provide specific reasons for the removal of AMA designations.

Issue Number: PP-OR-RMPforWOr-16-04-2

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The BLM is choosing to remove AMA designation and take away all official incentives and mandates that promote collaboration in this region.

Issue Number: PP-OR-RMPforWOr-16-04-5

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The impacts of OHV use were raised very clearly during the comment period for the DEIS, but were clearly not incorporated into the RMP analysis or the PRMP. Instead of addressing these significant and ongoing impacts as directed in Executive Orders 11644, Executive Order 11989 and the Administrative Procedures Act (APA), the BLM has simply refused to address these issues and has proposed to maintain the existing unauthorized trail network in the PRMP without specific analysis of routes or cumulative impacts. This decision will benefit those interests that have built illegal OHV trails and generated significant environmental impacts on BLM lands. It

will also impact those who participate in non-motorized recreation, own private land adjacent to BLM property, and non-motorized trail groups such as Applegate Trails Association and Siskiyou Upland Trail Association who are going through official NEPA processes to authorize and officially designate non-motorized trails for public use. Unauthorized, user-created routes and trails are being legitimized through this process, all without environmental review or disclosure in the NEPA process.

Issue Number: PP-OR-RMPforWOr-16-10-14

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: Courts have consistently found that an agency would be arbitrary and capricious if the agency has (1) relied on factors which Congress has not intended it to consider; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation for its decision that runs counter to the evidence before the agency, or (4) is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

In finalizing the PRMP, the BLM entirely failed to address two important aspects of the problem before it: (1) whether or not normal markets exist in the planning area, and (2) how to set reasonable prices for BLM timber sales that take into consideration the agency's own financial costs and the economic costs passed on to others.

Issue Number: PP-OR-RMPforWOr-16-29-10

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The decision to remove from LWC designation on the other hand was highly biased and predicated only on the mere presence of marketable timber.

Issue Number: PP-OR-RMPforWOr-16-46-2

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: BLM's arbitrary and capricious decision to include a portion of Wellington in the Harvest Land Base is a unilateral decision to eliminate an existing designation without due process.

Issue Number: PP-OR-RMPforWOr-16-46-3

Organization: Individual

Protester: John Duggan

Summary:

The BLM acted arbitrarily and capriciously, and in violation of the Administrative Procedures Act (APA) in the Western Oregon PRMP/FEIS, by:

- removing the Adaptive Management Area designation;
- removing protections from former lands with wilderness characteristics;
- failing to consider particular information from the public regarding OHV use;
- failing to consider particular information regarding socioeconomics; and
- providing adequate opportunities for public involvement.

Response:

The BLM's decision is in compliance with the Administrative Procedures Act (APA). An agency decision is compliant with the APA when it is not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law (5 USC § 706(2)(A)). The agency must

Issue Excerpt Text: Thus myself and many others were deprived of up to one-third of the allowable protest period.

Issue Number: PP-OR-RMPforWOr-16-46-6

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: As a retired professional communicator, I also protest BLM's failure to conduct public outreach, public involvement and public hearings based on minimum standards for both the Public Relations Society of America (PRSA) and the International Business Communication Association (IBCA).

Issue Number: PP-OR-RMPforWOr-16-46-7

Organization: Individual

Protester: John Duggan

Issue Excerpt Text: Protest the limited time available to develop a comprehensive review of this 2000 page public document, thus depriving me of commenting on the water issues because of the time-consuming research required to document issues contrary to BLM's findings.

analyze the relevant information and articulate a reasoned explanation for its action, “including a rational connection between the facts found and the choice made” (Motor Vehicle Mfr. Ass’n of the U.S. et al. v. State Farm Mut. Auto. Ins. Co. et al., 463 U.S. 29, 43 (1983)). An agency decision is arbitrary and capricious when the agency “relies on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before it, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise” (*Id.*). The BLM may rely on the reasonable opinions of its own experts (Marsh v. Or. Natural Resources Council, 490 U.S. 360, 378 (1989)). The decision need not be perfectly clear, as long as the “agency’s path may reasonably be discerned” (Bowman Transp. Inc. v. Arkansas-Best Freight System, 419 U.S. 281, 286 (1974)).

The BLM analyzed information relevant to this PRMP/FEIS. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

Adaptive Management Area

The BLM offered an appropriate explanation regarding the exclusion of the Adaptive Management Area, as designated in the 1995 RMPs, from the PRMP/FEIS. As stated in Appendix W, the BLM encourages and supports collaborative processes to support local land management projects. The PRMP/FEIS includes discussion of the adaptive management process and how the BLM will use adaptive management in its implementation; however, the BLM does not believe that a separate land use allocation is needed to support such collaborative processes. Nothing in the PRMP/FEIS would preclude new or continuing collaborative processes (PRMP/FEIS, pp. 1862-1863). The protester disagrees with the BLM, but fails to demonstrate that this decision is not in accordance with law.

Lands with Wilderness Characteristics

The BLM analyzed the relevant information and articulate a reasoned explanation for its action. In the PRMP/FEIS, the BLM explained the criteria by which the BLM would designate lands with wilderness characteristics. To be designated as a District Designated Reserve – Lands Reserved for their Wilderness Characteristics, tracts must exceed 5,000 acres in size. If management of a portion of an area identified as having wilderness characteristics for other resources or land uses would result in an area of less than 5,000 acres that could be managed for wilderness characteristics, none of the area would be designated as such (PRMP/FEIS, p. 465).

Where the requirements of FLPMA and the O&C Act conflict in regard to timber resources and their management, the O&C Act’s provisions will supersede those of FLPMA. Managing for wilderness characteristics is inherently incompatible with sustained-yield harvest (PRMP/FEIS, p. 463). Management for wilderness characteristics cannot be compatible with sustained-yield timber production, because the selling, cutting, and removing timber in conformance with the principles of sustained yield would alter such areas to the point of reducing or eliminating their wilderness characteristics (PRMP/FEIS, p. 18).

The protesters disagree with the BLM's decision to remove lands with wilderness characteristics protections from the Dakubetede and Wellington; however, they fail to demonstrate that BLM's criteria and decision was arbitrary and capricious or otherwise not in accordance with law. The BLM has further addressed specific concerns regarding the Dakubetede and Wellington in Section 10.

Off-Highway Vehicle (OHV)

The BLM analyzed relevant information and addressed comments regarding OHV use in the PRMP/FEIS, Appendix W. Decisions about OHV use in land use planning classify lands as open, limited, or closed. The BLM has deferred designation of individual routes for OHV use to implementation-level travel management planning (Appendix X – Guidance for Use of the Completed RMPs). Travel management planning would be subject to the NEPA process. Where the BLM has site-specific information about illegal OHV use, such as that provided by the protester, the BLM would be able to address management through implementation-level travel management planning (PRMP/FEIS, p. 1965). The BLM articulated a reasoned explanation for its action, which is permissible by NEPA and the BLM Travel and Transportation Manual (PRMP/FEIS, p. 776).

Public involvement

The BLM provided adequate opportunities for public involvement throughout the RMP planning process. The preparation of the Draft RMP/EIS included 38 public involvement efforts, including formal scoping, regional workshops on recreation management, community listening sessions, and public meetings about the Planning Criteria and preliminary alternatives (PRMP/FEIS, xxxiv). The BLM announced the planning process and opportunities for public involvement through the following public notifications:

- Notice of Intent (NOI) published in the Federal Register;
- Letters sent to the project mailing and emailing lists;
- Consultation letters sent to Native American tribes and affected interest groups;
- Consultation letters sent to Federal, state, county and city planning organizations;
- News releases to local news media sources;
- Legal notices published in local newspapers;
- Project website; and
- Announcements on the BLM website.

The BLM conducted further outreach through public meetings and open houses hosted throughout the planning area. The BLM offered a protest period in compliance with protest regulations (43 CFR 1610.5-2). For the PRMP/FEIS, the BLM published the Notice of Availability in the Federal Register on April 15, 2016 and published the PRMP/FEIS online the same day. The BLM offered appropriate opportunities for public involvement in accordance with applicable regulations.

Socioeconomics

The BLM analyzed information relevant to the issues identified in the PRMP/FEIS. A land use plan revision is broad in scope; NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail” (40 CFR 1500.1(b)).

Particular information need not be considered if its analysis is not related to the issue or would not lead to a reasoned choice between alternatives. The BLM responded to comments regarding this topic in Appendix W. The BLM used recent and historical trends in its analysis on markets and timber price (PRMP/FEIS, pp. 1951-1952). Because the BLM sells timber by auction in competitive markets, which represents the highest standard for establishing prices, market failures in the western Oregon timber markets do not constitute a substantial issue that would alter the analysis of effects of the alternatives on timber supply and demand as analyzed in the PRMP/FEIS. Additional analysis such as that suggested by the protester is not necessary to a reasoned choice between alternatives.

The BLM has appropriately relied on relevant information, and established a rational connection between the facts found and the decision made. For these reasons, the BLM is in full compliance with the APA.

Federal Trust Responsibility

Issue Number: PP-OR-RMPforWOr-16-16-9

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text:

These changes alone will significantly reduce the amount of timber harvested from the Tribe's lands. This reduction could amount to as much as 30% less than current harvest levels using NFP and Forest Stewardship Council-compliant management practices.

The BLM never discussed or analyzed the effects of this language to the Tribe. It was never highlighted in any of BLM's meetings with the Tribe.

The BLM has twice rejected such language. The first time the BLM did so, it did not provide a reason other than the text on pages 5-6 of its January 19, 2016 letter to Chairperson Meade (enclosed) stating "The text for the Affected Environment portion of the same section was edited by the BLM." The BLM rejected such language a second time for two reasons (1) because it determined that it could not compromise the Proposed RMP publication schedule in order to address the Tribe's concerns; and (2)

because it concluded, without explanation, that the proposed language would not "be appropriate because of the plain language and intent of the Coquille Forest Management Act". (Email from Mark Brown to Brett Kenney, March 16, 2016). This situation effectively creates a burden on the Tribe and the BIA to demonstrate to the consulting agencies why a different land use allocation is appropriate and justifiable. This regime will increase the cost to manage the Coquille Forest and the risk that federal agency action on the Tribe's behalf will encounter barriers to Tribal self-sufficiency. The result of this change, which was never discussed with the Tribe or the BIA, could at the very least cause substantial delays in critical timber revenues for the Tribe and at most could completely change the revenue forecast for the Coquille Forest. Even if all Coquille Forest lands were designated as Moderate Intensity Harvest Land Base (which is not a certain proposition) it would still result in a substantial loss in revenue under the Proposed RMP compared to management under the NFP, because of a number of new management requirements (none of which were raised during consultation as effects to Coquille Forest management).

Summary:

The BLM has failed to meet its trust responsibilities by failing to act in the best interests of the Coquille Indian Tribe ("Tribe"), by failing to consult with the Bureau of Indian Affairs ("BIA") instead of the Tribe, and by impeding the Tribe's cultural restoration goals.

Response:

The PRMP/FEIS is consistent with the responsibilities of the Secretary of the Interior to the Coquille Indian tribe ("Tribe"). The United States does owe a general trust responsibility to Indian tribes (*Morongo Band of Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 574 (9th Cir. 1998)). Unless there is a specific duty prescribed by statute, this responsibility is "discharged by

the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes" (*Id.*).

The BLM has met its general trust and specific statutory responsibilities to the Tribe. The BLM has not acted against the interests of the Tribe, has repeatedly met with the Tribe to better understand and act in its interests, is not required to consult with the BIA, and is not impeding the Tribe's cultural restoration goals.

The protesting party asserts that the BLM is acting against the Tribe's best interests by reducing the amount of timber that can be harvested from the Coquille Forest (with an accompanying loss of timber revenue), by not discussing the changes in timber harvest amounts with the Tribe, and by placing an additional Endangered Species Act (ESA) consultation burden on the Tribe and BIA. Each of those statements is addressed below.

Timber harvest

The protesting party asserts that the PRMP/FEIS reduces the amount of timber that can be harvested from the Coquille Forest, thereby reducing the amount of revenue available from the timber resources on the landscape. The PRMP/FEIS makes no such conclusion. The PRMP/FEIS is a Federal forest plan with standards and guidelines (the 'management direction') to which the Coquille Forest is subject (PRMP/FEIS p. 1045). The PRMP/FEIS specifically notes, however, that the BLM is not making a determination for specific land use allocations on certain portions of the Coquille Forest (PRMP/FEIS p. 808). Further, the BLM is not determining the rate or extent of timber harvest on the Coquille Forest, as those decisions are made by the Tribe and BIA in the course of Indian Forest Management Planning and individual project planning. The BLM did not speculate on the Tribe's future management actions, and NEPA does not require either such speculation or a worst-case effects analysis.

The BLM acknowledged that the Tribe retains the discretion to allocate the Coquille Forest lands into specific land use allocations (PRMP/FEIS p. 809). The effects of such land use allocation decisions by the Tribe would have similar effects as the identical land use allocations on adjoining Federal lands, guided by the management direction, would (*Id.*). The scale of analysis of the RMP level decision (2.4 million acres) and the scale at the Coquille Forest implementation (5,400 acres, or 0.225% of the RMP scale) do not allow a meaningful comparison of differences among alternatives between those two scales (*Id.*). Because the Tribe's timber harvest is affected by the Tribe's decisions about land use allocations, and those effects are speculative for this planning effort (as the effects depend on Tribal decisions which the Tribe has not made yet), and the BLM has complied with the general regulations and statutes, the BLM has not reduced the Tribe's timber harvest or revenue from the Coquille Forest.

Discussions with the Tribe

The BLM has communicated extensively with the Tribe. Details of the BLM's outreach to, and communication with, the Tribe are described in the PRMP/FEIS (PRMP/FEIS pp. 1043-45, 1613, 1623-25, 1631-32, 1636). In addition, the BLM and the Tribe have exchanged multiple letters throughout the RMP process (See letters between BLM and the Tribe dated July 18, 2012; February 24, 2014; March 13, 2014; October 17, 2014; June 10, 2015; and January 19, 2016). The Tribe is a cooperating agency under NEPA, and a member of the Cooperating

Agencies Advisory Group (PRMP/FEIS, p. 1044). Finally, the Tribe is a member of the Westside Steering Committee, which set the direction for the PRMP/FEIS (*Id.*).

The BLM has highlighted in its discussions with the Tribe the planning criteria, the alternatives development, the analytic methods, and the effects on Tribal lands (See, e.g., BLM letter of January 19, 2016). The Tribe's participation as a cooperating agency on a government-to-government basis, and as a member of the Westside Steering Committee, has given the Tribe all of the information that the protest letter asserts has not been discussed. The Tribe has not, until the protest, given any indication that information has been lacking or that the communication between the BLM and the Tribe has been insufficient. Therefore, the BLM has appropriately met its trust responsibilities to communicate with the Tribe.

ESA Burden

The Tribe's future timber harvest program, in addition to being speculative, remains by statute (25 USC § 715c(d)(5)) subject to existing Federal forestry and environmental protection laws, such as NEPA and the Endangered Species Act, just as it was prior to the PRMP/FEIS effort. As such, future tribal management planning and tribal timber harvests will undergo their own ESA consultation, based on the land use allocations and associated management direction. The Tribe, in consultation with the BIA, will make any land use allocation decisions for the Coquille Forest (PRMP/FEIS p. 809). The requirements of the ESA are not being changed by the PRMP/FEIS. Consultation obligations will therefore remain on the BIA and the Tribe under the PRMP/FEIS as it is under the Northwest Forest Plan. The BLM has therefore complied with its general trust responsibilities.

Because the BLM has met the general and specific statutory responsibilities, has cooperated with the Tribe in sharing and developing information and language for the PRMP/FEIS, and is not placing any new burden on the Tribe, the BLM has complied with the trust obligations of the Federal government. The protest has not provided any new information or other reason to reverse the State Director's decision, and is therefore denied on this point.

Consultation with Bureau of Indian Affairs

Issue Number: PP-OR-RMPforWOr-16-16-14

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: The Proposed RMP ostensibly leaves it up to the Tribe to determine what land use allocations occur within the Coquille Forest (Proposed RMP p.808), but provides no guidance regarding what criteria are or are not used to assign those land use allocations. There are three issues with this: First, even though Congress recognized the Assistant Secretary of Indian Affairs (the “ASIA”) as a federal trustee with regard to the Coquille Forest (25 USC § 715c(d)(5)), the Proposed RMP anticipates no role for the ASIA or the BIA in the land allocation process and provides no guidance for how it should occur. This omission fails to meet the correct standard of duty for a fiduciary such as the BLM.

The Tribe has several times requested the BLM to engage in such consultation and the BLM, without explanation, has failed to act on these requests. Although the trust responsibility permeates all bureaus and executive offices, the BIA has special and unique responsibilities regarding Indian trust lands, including the Coquille Forest. These responsibilities include, but are not limited to: the protection of the forest trust asset, the approval of tribal resource management plans, the approval of all federal decisions within the forest (including consultation with other federal agencies on environmental, cultural resource and historical protection matters), the approval of timber sales and special forest gathering policies, the approval of road use agreements and permits, the enforcement of trespass actions, the funding of tribal management actions and the defense of tort

claims. Given this level of BIA involvement in our Coquille Forest, the BLM's failure to even contact the BIA is negligent and egregious. Moreover, the BLM's failed obligations have now been compounded because the BIA now refuses to submit a protest solely because the BLM did not contact them during the planning process. We do not know what BLM's motivations were in refusing to consult with the BIA, but the functional outcome of BLM's refusal is to leave the Tribe without the BIA's advocacy during this protest process. Federal agencies should not be able to escape their trust responsibilities by failing to communicate with one another. Given the scope of the BLM's and the BIA's roles, and the level of dependence that the Tribe has on both of them for the effective management of its Coquille Forest, it is absolutely necessary for both agencies to engage in meaningful consultation before any Proposed RMP is adopted, including resolution of the other items listed in this protest. The Department of the Interior Policy on Consultation with Indian Tribes states, “[t]o that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications.” In this case, the BIA has overlapping responsibilities, special expertise and related responsibilities regarding the management of the Coquille Forest, and the Proposed RMP intensively influences those matters. Consultation has not yet occurred and must occur. Second, the BLM rejected language proposed by the Tribe to help resolve ambiguities regarding the assignment of land use allocations.

Third, the BLM has consulted with the NMFS and USFWS regarding the land use allocations proposed in the plan, including relatively restrictive timber harvest allocations that share or are likely to share

common boundaries with Coquille Forest parcels, but has made no accommodation in those consultations for the Coquille Forest parcels.

Summary:

The BLM failed to consult with the Bureau of Indian Affairs (BIA) as part of the planning process. Specifically, the PRMP/FEIS does not guide the BIA and Tribe in what land use allocations to make on the Coquille Forest lands, and allocation decisions that differ from adjoining forest stands on BLM lands will impose an additional ESA burden on the Tribe and BIA.

Response:

The PRMP/FEIS is consistent with the responsibilities of the Secretary of the Interior to the Coquille Tribe. The United States does owe a general trust responsibility to Indian tribes (*Morongo Band of Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 574 (9th Cir. 1998)). Unless there is a specific duty prescribed by statute, this responsibility is “discharged by the agency’s compliance with general regulations and statutes not specifically aimed at protecting Indian tribes” (*Id.*).

The BLM is not required to consult with the BIA under NEPA or the general trust responsibility. The BIA is a member of the Regional Interagency Executive Committee (REIC), which the BLM has been consulting throughout the RMP process (PRMP/FEIS pp. 1048-49). The BLM has also consistently communicated with the Tribe. See discussion on communication with the Tribe protest point above. The ESA consultation burden asserted by the protesting party, also as mentioned previously, will exist regardless of BLM’s action. The Tribe and the BIA will remain subject to the ESA regardless of BLM’s actions or analyses. Any future management plan for the Coquille Forest established by BIA and the Tribe will be subject to NEPA and ESA analysis, also regardless of BLM’s actions or analyses. In short, the ESA “burden” is a function of the ESA statute, not the PRMP/FEIS.

As noted above, the BLM is specifically not determining the land use allocations for the lands within the Coquille Forest in the PRMP/FEIS (PRMP/FEIS p. 808). The BLM is not the manager of the Tribe’s land. Neither does the BLM have the authority to direct the Tribe to choose specific allocations for the Coquille Forest lands. As such, BLM is neither required to provide guidance to the Tribe or BIA on land use allocation decisions on Coquille Forest lands, nor to resolve tribal considerations in those decisions.

Finally, as noted above, the scale of analysis of the RMP level decision (2.4 million acres) and the scale at the Coquille Forest implementation (5,400 acres, or 0.225% of the RMP scale) do not allow a meaningful comparison of differences among alternatives between those two scales (PRMP/FEIS p. 809). Consultation with the BIA would not affect the differences in the scale of analysis.

The BLM is not required to consult with the BIA as part of its trust responsibilities to the Tribe. The BIA is a member of the RIEC, which the BLM has engaged throughout the RMP process. The BLM is not making a determination on the land use allocations on the Coquille Forest, nor is it required to provide direction to the Tribe on how the Tribe is to make its decisions. The PRMP/FEIS does not create any ESA responsibility on the Tribe or the BIA that the ESA itself does not already impose. And the scale of analysis does not allow a meaningful comparison among alternatives. Consultation with BIA would change none of those conclusions.

Cultural Restoration Goals

Issue Number: PP-OR-RMPforWOr-16-16-12

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: Moreover, implementation of the Proposed RMP will defeat the Cultural Restoration goals of the BIA-approved Coquille Forest Resource Management Plan. As noted above, cultural restoration (along with economic benefit) also is a major goal stated by Congress in creating the Coquille Forest. Restoring culturally significant plants (bear grass, hazel, willow, cedar, mixed hardwoods, etc.) requires active silvicultural treatment of the existing Douglas-fir monoculture forest stands that the Tribe inherited from the BLM when Congress created the Coquille Forest. The most successful management activity in restoring culturally significant

vegetation has been the inclusion of special prescriptions in regeneration harvest timber sales. Within harvest units, special treatments have been applied to promote bear grass, reestablish cedar and mixed hardwoods in previous single species monoculture stands and restore other native species to the landscape.

All of these practices and objectives are set forth in the Tribe's BIA-approved Coquille Forest Resource Management Plan. If harvest activity were restricted or eliminated due to compliance with management direction established for land allocations established by the BLM lands adjacent to Coquille Forest, achievement of the Tribe's cultural restoration goals would be significantly adversely affected. The BLM provides no justification or information to support this change, nor how it is consistent with its trust responsibility.

Summary:

The land use allocations in the Western Oregon PRMP/FEIS on BLM lands adjacent to the Coquille Forest, and the management direction associated with those BLM lands, will negatively affect the harvest levels on the Coquille Forest because it will prevent the Tribe from implementing the Tribe's cultural restoration goals.

Response:

The PRMP/FEIS is consistent with the responsibilities of the Secretary of the Interior to the Tribe, and is not affecting the Tribe's cultural restoration. The United States does owe a general trust responsibility to Indian tribes (*Morongo Band of Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 574 (9th Cir. 1998)). Unless there is a specific duty prescribed by statute, this responsibility is "discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes" (*Id.*).

The PRMP/FEIS does not affect the harvest level on the Coquille Forest, and therefore is not impeding the Tribe's cultural restoration goals and activities. As described above, the BLM is not making a determination on the land use allocations on the Coquille Forest (PRMP/FEIS p. 809). Land use allocation decisions on the Coquille Forest will be made by the Tribe and BIA (*Id.*). Any estimates of tribal harvest rates on the Coquille Forest would be speculative (*Id.*). Because the BLM is not making a determination of the land use allocations on the Coquille

Forest, and thus is not affecting the harvest level, there is no causal relationship between the PRMP/FEIS's land use decisions and the Tribe's cultural restoration activities.

National Conservation Lands

Issue Number: PP-OR-RMPforWOr-16-17-3

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Klamath-Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: As detailed in the comments submitted by the Protesting Parties, many of the resources and values within the boundary of the Cascade-Siskiyou National Monument are unavoidably affected by the management

actions within the decision area. These direct, indirect and cumulative impacts can harm or benefit the Monument. However, these impacts are not even mentioned. Further, this substantive comment is not acknowledged or addressed in BLM's Responses to Comments (See, Appendix W) compounding the BLM's failure to comply with NEPA.

The omission of considering the impacts of the Proposed RMP on the Cascade-Siskiyou National Monument also ignores BLM policy on managing units of the National Conservation Lands,

Summary:

The BLM failed to analyze the impacts of the Western Oregon PRMP/FEIS on the Cascade-Siskiyou National Monument.

Response:

The BLM has appropriately analyzed the connected actions, and described the effects on the environment. "Actions are connected if they: (i) automatically trigger other actions which may require EISs. (ii) cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) are interdependent parts of a larger action and depend on the larger action for their justification" (40 CFR 1508.25). Connected actions must be considered together "to prevent an agency from "dividing a project into multiple 'actions,' each of which individually has an insignificant environmental impact, but which collectively have a substantial impact" (Native Ecosystems Council v. Dombeck, 304 F.3d 886, 894 (9th Cir. 2002) (citing Wetlands Action Network v. U.S. Army Corps of Eng'rs, 222 F.3d 1105, 1118, 9th Cir. 2000)). However, the test for connected actions is whether or not the actions have utility independent from each other, and whether one action can proceed in the absence of the other (Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291, 1305 (9th Cir. 2003)).

The PRMP/FEIS clearly states in both the Chapter 1 Introduction and the Chapter 3 Affected Environment and Environmental Consequences sections regarding the planning area that within the Western Oregon offices, three BLM-administered areas are not included in the decision area, one of which is the Cascade Siskiyou National Monument (Medford District) (PRMP/FEIS, pp. 3 and 115). These areas have independent RMPs, and the Cascade-Siskiyou National Monument completed its own RMP in 2008.

The BLM would continue to implement actions directed by these decisions unless and until the BLM amends, revises, or rescinds these existing decisions in decision-making separate from this

RMP revision. The BLM provided separate NEPA compliance to support these existing decisions. This RMP revision does not alter these existing decisions or analyses; accordingly, this PRMP/FEIS considers such actions among the past, present, and reasonably foreseeable future actions in cumulative effects analyses. For the purpose of NEPA analysis, the BLM summarizes and cites these decisions and their supporting analyses to incorporate them by reference into Chapter 3 of this PRMP/FEIS where they are relevant to the analysis, consistent with 40 CFR 1502.21 (PRMP/FEIS, p. 25).

Additionally, the Protester does not specify what types of management activities outside the Cascade Siskiyou National Monument on BLM-administered lands of western Oregon they believe might have an impact within the Monument.

Thus, the Western Oregon PRMP/FEIS will not alter the independent RMPs that are within the decision area (PRMP/FEIS, p. 3).

National Conservation Lands – Wild & Scenic Rivers

Issue Number: PP-OR-RMPforWOr-16-15-1

Organization: Double R Ranch Trust

Protester: Jennie Bricker (Attorney)

Issue Excerpt Text: The conclusion that the Rogue River segment from the Applegate River confluence upstream to Lost Creek Dam (river mile 95 to 157.5) (the “63-mile segment”) is a “free-flowing stream” and thus eligible for designation, a conclusion that violates the express terms of the Wild and Scenic Rivers Act.

Under the express terms of the Wild and Scenic Rivers Act (“WSRA”), the 63-mile segment is neither eligible nor suitable for inclusion in the program. Imposing designation on this segment would actually undermine the statutory purpose of preserving water quality and protecting environmental values such as healthy fish habitat.

The WSRA was enacted to create a balance between preservation and development, to counter the “national policy” of dam development with a policy that would preserve “certain selected rivers” in their free-flowing state. WSRA Section 1, 16 USC § 1271. To be eligible for inclusion in the program, a river must be a “free-flowing stream.” Section 2, 16 USC § 1273(b).

“Free-flowing” is defined in the Act, see Section 16, 16 USC § 1286(b), as follows: “Free-flowing,” as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.

The definition goes on to clarify that “low dams, diversion works, and other minor structures” do not automatically disqualify a river from eligibility. However, while the statutory terms “impoundment” and

“diversion” are qualified to allow these types of “minor structures,” there is no de minimus exception for “straightening, rip-rapping, or other modification” of a river. To the contrary, the Act is unambiguous: Any amount of streambank canalization, armoring, or “other modification” makes a waterway ineligible under the WSRA. All of these activities have been used in the 63-mile segment to modify and stabilize the river channel.

Issue Number: PP-OR-RMPforWOr-16-15-2

Organization: Double R Ranch Trust

Protester: Jennie Bricker (Attorney)

Issue Excerpt Text: The conclusion that the 63-mile segment is suitable for designation, a conclusion that is inconsistent with the guidelines and instructions set forth in BLM Manual 6400 - Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, Planning, and Management (July 13, 2012).

https://ilmocop-ws2.blm.doi.net/CW43_Production_UI/Reporting/Reports/uhong/Issue.html[5/24/2016 7:03:05 AM]

Even if the segment were eligible for designation, which it is not for the reasons explained above, it is not suitable for designation. BLM Manual 6400 - Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, Planning, and Management (July 13, 2012) (“BLM Manual”) sets forth the analysis required to determine suitability. See BLM Manual § 3.4. The Manual identifies four questions (discussed below) for the agency to answer in evaluating “the benefits and impacts of WSR designation”; as well as thirteen factors to be considered in

determining suitability. See *id.* The Wild & Scenic Rivers Suitability Report for Southwest Oregon (“Suitability Report”), referenced in Appendix U, does not mention or answer the preliminary four questions required by the Manual. The Report’s

assessment of the thirteen factors is flawed. Under a correct evaluation of suitability, the proposed segment does not meet the criteria in the BLM Manual.

Summary:

BLM’s Wild and Scenic River (WSR) suitability study conclusion that the “63-mile segment” of the Rogue River is eligible and suitable for designation, is inconsistent with the guidelines and instructions set forth in BLM Manual 6400 - Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, Planning, and Management (July 13, 2012) and violates the expressed terms of the Wild and Scenic Rivers Act. The BLM failed to address and answer the preliminary four questions required by the manual resulting in a flawed assessment and ultimately an incorrect determination of suitability and eligibility for WSR designation of the Rogue River segment.

Response:

Wild & Scenic River suitability and eligibility standards

The BLM has appropriately identified the eligibility and suitability standards under the Wild & Scenic Rivers (WSR) Act (“Act”). To be eligible to be included in the National Wild & Scenic Rivers System, a river area must be free-flowing and the adjacent land area must have one or more outstanding recreational values (16 USC § 1273(b)). The Act defines such rivers into wild (free of impoundments, accessible only by trail, and with undeveloped and unpolluted shorelines and watersheds), scenic (free of impoundments and generally accessible only by trail, though with some areas accessible by road, and with shorelines and watershed in a largely primitive state), and recreational (readily accessible by road or trail, with some development along the shorelines and in the watersheds) (*Id.*). Outstanding remarkable values are scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values (*Id.* at § 1271). The BLM has further defined thirteen factors to consider when determining whether a river or river section is suitable to recommend to Congress for inclusion in the National Rivers System (BLM Manual 6400, pp. 3.6 through 3.7, 2012).

The “63-mile segment” of the Rogue River and the associated 754 acres of BLM-administered lands underwent an eligibility and suitability review as part of this PRMP/EIS revision. The details of the eligibility and suitability study process for this segment of Rogue River are documented in Section 2, pp. 7–9 of the Wild and Scenic Rivers Suitability Report for Southwest Oregon (BLM USDI 2015). The BLM followed agency guidance and conducted the eligibility and suitability study phases in accordance with BLM Manual 6400 Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, Planning, and Management (BLM USDI 2012), The Wild and Scenic River Study Process Technical Report (Interagency Wild and Scenic Rivers Coordinating Council 1999), and with the WSR Act.

The suitability phase of the study is designed to answer the four (4) following questions to determine whether eligible rivers would be appropriate additions to the NWSRS; Should the

river's free flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise? Will the river's free flowing character, water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor? In answering these questions, the benefits and impacts of WSR designation must be evaluated, and alternative protection methods considered. Is there a demonstrated commitment to protect the river by any non-Federal entities that may be partially responsible for implementing protective management (BLM Manual 6400, 3.4, 1-4, 2012)?

Rivers found not suitable by the managing agency conducting the suitability study would be dropped from further consideration for inclusion into the National Wild and Scenic Rivers System. (Page 1, of the Wild and Scenic Rivers Suitability Report for Southwest Oregon (BLM USDI 2015) and released for other uses.

The Rogue River suitability factor assessment is contained in the Wild and Scenic Rivers Suitability Report (pp. 121–139). The BLM followed the methodology to determine whether this eligible river would meet the 13 suitability criteria to be appropriate to recommend for inclusion in the National System and found the Rogue River to be suitable to recommend for potential inclusion. The alternatives consider a range of requisite protections and recommendations for inclusion into the National Wild and Scenic River (NWSR) System. Under the PRMP/FEIS, the administrative determination of eligible suitable for the Rogue River segment, of eligible for inclusion, the BLM would be recommended for inclusion into the National Wild and Scenic River System where it would receive interim management for the outstanding remarkable values and a tentative classification until Congress either designates the river or releases it for other uses. This interim management would apply only to BLM-administered lands and would have no bearing on private land management. The BLM has not proposed to recommend any non-BLM-administered lands, including privately owned lands, for inclusion into the National Wild and Scenic River System anywhere in the decision area.

The Rogue River suitability factor assessment is contained in the Wild and Scenic Rivers Suitability Report (pp. 121–139). The BLM is consistent with agency guidance found in the BLM Manual 6400 (BLM USDI 2012) and the methodology recommended by the Interagency Wild and Scenic Rivers Coordinating Council and the WSR Act. Based on findings of the suitability study conducted on the “63-mile” Rogue River segment, the BLM's determination of eligible and suitable -based on the ORVs (Fish and Recreation) present within the river corridor being studied- and the recommendation for potential inclusion NWSR System is correct and consistent with the WSR Act .

National Conservation Lands – Lands with Wilderness Characteristics

Issue Number: PP-OR-RMPforWOr-16-04-10

Organization: Klamath Forest Alliance

Protester: Luke Ruediger

Issue Excerpt Text: The BLM's decision to remove Lands with Wilderness Characteristics protections for the Wellington and Dakubetede Lands with Wilderness Characteristics was arbitrary and capricious. The BLM has officially analyzed and identified wilderness characteristics in both areas. When inventorying the Dakubetede and Wellington Lands with Wilderness Characteristics the BLM found both unroaded areas to be worthy of Lands with Wilderness Characteristics designation. This was due to the general intact nature of plant communities, the lack of road development, the areas size, the abundant wildlife, naturally appearing landscape mosaic, and wilderness character.

Issue Number: PP-OR-RMPforWOr-16-17-4

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Klamath-Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: The BLM has improperly limited both its inventory and management decisions. The Proposed RMP applies a strict requirement that areas contain at least 5,000 acres of roadless lands, unless adjacent to another federally managed area (Proposed RMP, p. 466). BLM used this criteria to improperly disqualify areas from further consideration, including the Green Springs Mountain inventory unit, citing **Manual 6310, Section**

.06 C.2.A. (Proposed RMP, p. 465).

However, this conclusion ignores the direction in the Manual providing that areas of less than 5,000 acres can also meet the size criteria where: "[i]t is demonstrated that the area is of sufficient size as to make practicable its preservation and use in an unimpaired condition." Manual 6310, Section .06.C.2.B. The Green Springs Mountain inventory proposal explicitly addressed this issue but the Proposed RMP does not address it - applying an overly strict interpretation of the inventory criteria and improperly disqualifying lands with wilderness characteristics from consideration for protection.

BLM also limits consideration of managing lands to protect wilderness characteristics to areas that are not identified as suitable for timber production. See, Proposed RMP, p. 463. As discussed above and in previous comments, protection of lands with wilderness characteristics is consistent with the O&C Act; these lands contribute to ecological health and recreation opportunities for local communities. In addition, BLM's guidance on lands with wilderness characteristics requires that "the NEPA document used to support the land use plan (or land use plan amendment or revision) decision shall contain a full range of reasonable alternatives to provide a basis for comparing impacts to wilderness characteristics and to other resource values or uses." Manual 6320, Section .06.A.2.d. The guidance also provides that "[i]n areas where the management decision is not to protect wilderness characteristics, consider measures to minimize impacts on those characteristics" *Id.* BLM did not fully consider these alternatives despite its authority under FLPMA, requirements under current guidance and obligations to consider a reasonable range of alternatives under

NEPA (40 CFR § 1502.14 (the range of alternatives “is the heart of the environmental impact statement.”)).

Issue Number: PP-OR-RMPforWOr-16-29-1

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: BLM ARBITRARILY REMOVED LWC PROTECTIONS IN THE DAKUBEDETE AND WELLINGTON LWC. THIS REMOVAL IS INCONSISTENT WITH THE O&C ACT.

Issue Number: PP-OR-RMPforWOr-16-29-11

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: As such, the removal of LWC protections constitutes not only a highly controversial decision, but also an irretrievable commitment of resources and irreversible impact to the already extremely rare Lands with Wilderness Characteristics.

Issue Number: PP-OR-RMPforWOr-16-29-12

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: Timber removal is incompatible with the protection of wilderness character.

Issue Number: PP-OR-RMPforWOr-16-29-17

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: THE BLM DID NOT ADEQUATELY ANALYZE THE PROPOSED ADDITIONS TO THE WELLINGTON LWC IN THE HEADWATERS OF CHINA GULCH. The agency did not adequately analyze the proposed additions to the Wellington LWC. The 5712 acre Wellington Butte LWC was a citizen based nomination at 6300 acres. BLM arbitrarily excluded 588 connected acres on the west side of Mount Isabelle.

Issue Number: PP-OR-RMPforWOr-16-29-3

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The BLM has the discretion within the O&C Act to create LSR forests, District Defined Reserves of various sorts, LWCs, riparian reserves, and ACECs.

Issue Number: PP-OR-RMPforWOr-16-29-4

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: With this discretion in mind, the agency should maintain all LWC designations on Western Oregon BLM lands.

Issue Number: PP-OR-RMPforWOr-16-29-8

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: The BLM's decision to remove LWC protections for the Wellington and Dakubetede LWC was arbitrary and capricious.

Issue Number: PP-OR-RMPforWOr-16-29-9

Organization: Applegate Trails Association

Protester: David Calahan

Issue Excerpt Text: When inventorying the Dakubetede and Wellington LWCs, the BLM found both un-roaded areas to be worthy of LWC designation.

Summary:

The insufficient consideration and analysis of wilderness characteristics in the Western Oregon PRMP/FEIS violates law. The BLM arbitrarily removed lands with wilderness characteristics protections, improperly applied the policy, and misapplied the criteria within the policy. The PRMP is allowing timber harvest within designated lands with wilderness characteristics- an incorrect interpretation of the FLPMA policy and guidance.

Response:

The BLM has appropriately identified and protected lands with wilderness characteristics. These lands are those that are road-less areas of 5,000 acres or more, or are smaller islands identified by inventory as having wilderness characteristics (43 USC § 1782). An area of wilderness characteristics is “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” (*Id.* at § 1702(i); 16 USC 1131(c)). Roadless in this context means an “absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road” (*Montana Wilderness Ass'n v. Connell*, 725 F.3d 988, 994-95 (9th Cir. 2013) (citing H.R. Rep. No. 94-1163 at 17)). The BLM retains the authority to manage these lands for multiple use and sustained yield (43 USC § 1712). Tracts of land that have been dedicated by law to a specific use are to be managed for those uses (*Id.* at § 1732(a)). Where the requirements of FLPMA and the O&C Act conflict in regard to timber resources and their management, the O&C Act's provisions supersede those of FLPMA (*Id.* at 1701 Note (b)).

Consistent with the FLPMA and current BLM policy, the BLM updated the wilderness characteristics inventories for western Oregon as part of this plan revision (PRMP/FEIS, p. 464). In conducting these inventories, Western Oregon BLM districts followed the guidance provided in BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands (USDI

BLM 2012). This manual outlines the process for identifying BLM lands that meet the following criteria: (1) encompass at least 5,000 acres of road-less, contiguous BLM lands; (2) appear to be in a natural condition; and (3) provide outstanding opportunities for solitude or primitive and unconfined recreation (PRMP/FEIS, p. 465). Refer to the wilderness characteristics inventory (USDI BLM 2013) for additional inventory information.

However, as noted above, for those tracts of land that have been dedicated to specific uses according to any other provision of law, such as the O&C Act, the FLPMA directs that they shall be managed in accordance with such law. The O&C Harvest Land Base lands cannot be managed for preservation of wilderness characteristics because the O&C Act expressly directs that the mechanism for achieving the purposes of the Act—supply timber, protect watersheds, regulate stream flow, contribute to the economic stability of local communities, and provide recreational facilities—is in the manner and timing by which BLM sells, cuts, and removes timber from the O&C.

Under the PRMP/FEIS, the BLM would manage all inventoried lands with wilderness characteristics that occur outside of the Harvest Land Base (PRMP/FEIS, p. 465). Managing for wilderness characteristics is inherently incompatible with sustained-yield harvest. (PRMP/FEIS, p. 463). Because the O&C Act expressly directs that O&C lands be managed for sustained yield, lands within the Harvest Land Base were removed from the designation and, as a result, would open for timber harvest. Because of the incompatibility between managing for wilderness characteristics and sustained-yield timber harvest, removal of Harvest Land Base acres causes some units to fall below the 5,000-acre minimum size threshold in the PRMP/FEIS; thus, those units were not identified as lands with wilderness characteristics (PRMP/FEIS, pp. 465, 470). This includes the removal of Wellington and Dakubetede from the District-Designated Reserve-Lands managed for their wilderness characteristics. The removal of protections in these areas was consistent with criteria included in the Draft RMP/EIS, which was available for public comment.

The Western Oregon PRMP/FEIS applied the applicable laws and BLM direction appropriately. BLM followed the criteria set forth in the FLPMA and current BLM policy for Lands with Wilderness Characteristics. The BLM's interpretation of the FLPMA policy and guidance was accurate.

National Conservation Lands – Wilderness Study Areas

Issue Number: PP-OR-RMPforWOr-16-12-7

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The Solicitor's memorandum reconciles the O&C Act with FLPMA's wilderness study provision as follows: O&C lands that BLM concludes are suitable for timber production are ineligible for wilderness study, while O&C lands that are not suitable can be considered for wilderness. Thus O&C lands have been included in some wilderness study areas and designated wilderness areas, such as the Wild Rogue Wilderness and Table Rock Wilderness.

Issue Number: PP-OR-RMPforWOr-16-12-8

Organization: Earthjustice, et. al.

Protester: Kristin Boyles / Todd D. True

Issue Excerpt Text: The BLM has the legal authority – and in fact a duty – to classify lands as not suitable for timber production

and to reduce timber harvests as necessary in order to comply with the provisions of other laws, as well as the multiple mandates of the O&C Act.

Issue Number: PP-OR-RMPforWOr-16-17-5

Organization: Soda Mountain Wilderness Council / The Wilderness Society / Klamath-Siskiyou Wildlands Center

Protester: Dave Willis / Nada Culver / Joseph Vaile

Issue Excerpt Text: Further, BLM claims that it no longer has the authority to designate wilderness study areas (WSAs), citing a 2003 settlement agreement. Appendix W, p. 1936. Since that agreement is not a consent decree, it is not binding. We maintain that the BLM's policy to abide by this settlement and reject its authority to designate WSAs is not valid and should not continue to be applied.

Summary:

The BLM gave insufficient consideration to Wilderness Study Areas (WSAs). BLM improperly interpreted the 2003 settlement agreement regarding WSA designation and therefore did not follow FLPMA/WSA policy in the PRMP.

Response:

The BLM does not have the authority to designate new WSAs as part of the land use planning process. Congress established a deadline for the BLM's authority to designate WSAs, which are then managed under the non-impairment provisions of Section 603 of FLPMA.

The BLM's authority to conduct wilderness reviews, including the establishment of new Wilderness Study Areas, expired on October 21, 1993, pursuant to Section 603 of the FLPMA. PRMP/FEIS, p. 464. The BLM does not have the authority to designate new WSAs under the land use planning § 161 process. Where the requirements of FLPMA and the O&C Act conflict in regard to timber resources and their management, the O&C Act's provisions supersede those of FLPMA (43 USC § 1701 Note (b)).

The BLM completed the wilderness review of public land in Oregon as required by FLPMA Section 603 on October 7, 1991. As required under the FLPMA and current BLM policy, the BLM updated the wilderness characteristics inventories for western Oregon as part of this plan revision (PRMP/FEIS, p. 464). The designation of WSAs through the wilderness inventory and study process (PRMP/FEIS at 3-422) and the subsequent management under the non-impairment standard required by FLPMA was determined to be inconsistent with the management of lands within the Harvest Land Base for timber resources. The BLM's authority to designate additional lands as WSAs pursuant to FLPMA Section 603 expired on October 21, 1993, as affirmed in the settlement agreement in *Utah v. Norton*, Case No. 96-cv-870-DB (D. Ut. 2003), *aff'd on other grounds*, *Utah v. Dep't. of the Interior*, 535 F.3d 1184 (10th Cir. 2013). Any remaining authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 USC §1712). This section, however, does not allow the BLM to designate any lands as WSA or manage them under the Interim Management Plan. Therefore, any alternative that would analyze the designation of new WSAs within the Harvest Land Base would be in conflict with the specific statutory requirement of the O&C Act, and therefore unreasonable.

In summary, because the BLM does not have the authority to designate new WSAs as part of the land use planning process, their designation was not considered or included in the Western Oregon PRMP/FEIS.

Coquille Forest Act

Issue Number: PP-OR-RMPforWOr-16-16-3

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: This Proposed RMP language self-vests BLM with an authority that goes well beyond that described in the Coquille Forest Act. The Proposed RMP attempts to expand the phrase “standards and guidelines” to include all of the BLM's management direction recovery plans, biological opinion recommendations and conservation measures (Proposed RMP p. 1045). Indeed, the Proposed RMP now mandates Coquille Forest management to comply with requirements well beyond the standards and guidelines of the NFP and even the subject matter addressed by them. This new directive strays well beyond the Congressional intent to limit compliance to

“[t]he rules and limits governing actions, and the principles specifying the environmental conditions or levels to be achieved and maintained.” The effects of the BLM's expansive interpretation of “standards and guidelines” coupled with its rejection of these proposed amendments could prove disastrous to the Tribe. Under the Proposed RMP, it appears that the Coquille Forest would be managed subject to recovery plans, conservation measures, and recommendations from biological opinions, none of which have applied to the Coquille Forest. Applying these entirely new categories of management restrictions to the Coquille Forest thwarts the intent of Congress and will have a substantial negative effect on revenue to fund Coquille Tribal government activities for the foreseeable future.

Summary:

The BLM has failed to comply with the Coquille Restoration Act, referred to in the protest as the ‘Coquille Forest Act’.

Response:

The Western Oregon PRMP/FEIS is consistent with the Coquille Restoration Act (“CRA”). The CRA requires the Secretary of the Interior to manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act (“ESA”) (25 USC § 715c(d)(5)). Management of the Coquille Forest lands is subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future (*Id.*). Standards and guidelines are the “rules and limits governing actions, and the principles specifying the environmental conditions or levels to be achieved and maintained” (*Cascadia Wildlands et al. v. Bureau of Indian Affairs*, 801 F.3d 1105, 1115 (9th Cir. 2015)).

The protesting party is asserting that the BLM is exceeding its statutory authority by expanding the definition of ‘standards and guidelines’ in the CRA beyond Congressional intent for the Coquille Forest. The standards and guidelines associated with the CRA apply, as noted above, to current and future BLM RMPs. Congress intended to include the possibility of changes in future plans, as shown by its use of the word ‘future’ in the CRA (if Congress had intended to freeze

the management of the Coquille Forest as of 1996 it possessed the authority, discretion, and ability to do so). The BLM retains the statutory authority and obligation to revise its RMPs as needed (PRMP/FEIS, p. xxiii). The PRMP/FEIS is, therefore, a ‘future’ Federal forest plan, as contemplated by the CRA, and is within BLM’s authority.

The management direction of the PRMP/FEIS is within the bounds of Congressional intent for the BLM lands and for the Coquille Forest. The management direction is synonymous with the term ‘standards and guidelines (PRMP/FEIS, p. 1045). The management direction describes the areas “where future actions may or may not be allowed” (PRMP/FEIS, p. 1097 (App. B)). The management direction also identifies “what restrictions or requirements may be placed on those future actions” (*Id.*). The management direction consists of rules and limits governing future actions for each land use allocation (PRMP/FEIS, 1099-1129), administrative action (PRMP/FEIS, p. 1130), and resource program (PRMP/FEIS, pp. 1131-1161). It also identifies principles specifying environmental conditions to be achieved and maintained (*Id.*).

Because the BLM retains and is implementing its statutory authority to revise the ‘Federal forest plans’ in the future from the date of the CRA, the BLM is not exceeding its authority by doing so. Because the management direction described in the PRMP/FEIS includes rules and limits governing future actions, and the principles specifying the environmental conditions or levels to be achieved and maintained it meets the definition of a ‘standard and guideline’ of the CRA. Therefore, the BLM is within its authority to identify the management direction as synonymous with a ‘standard and guideline’, and the PRMP/FEIS is consistent with the CRA.

Other Federal Laws, Policies & Regulations – OMB Circular A-94

Issue Number: PP-OR-RMPforWOr-16-10-6

Organization: Center for Sustainable Economy

Protester: H. John Talberth

Issue Excerpt Text: OMB Circular A-94 (“General Principles” Section 5) is explicit in this requirement for federal programs: Analyses should include comprehensive estimates of the expected benefits and costs to society based on established definitions and practices for program and policy evaluation. Social net benefits, and not the benefits and costs to the Federal Government, should be the basis for evaluating government programs or policies that have effects on private citizens or other levels of government. Social benefits and costs can differ from private benefits and costs as measured in the marketplace because of imperfections arising from: (i) external economies or diseconomies where

actions by one party impose benefits or costs on other groups that are not compensated in the market place; (ii) monopoly power that distorts the relationship between marginal costs and market prices; and (iii) taxes or subsidies (emphasis in original).

The Department of Interior (DOI) has fully embraced OMB’s mandate to consider negative externalities in planning decisions: In many cases the benefits provided by the raw materials and products that flow from DOI managed lands, as well as the production, distribution and use of these products, also may cause adverse effects on the environment, economy, or society. Economists typically characterize these adverse effects as negative externalities.... “The ability to evaluate these negative externalities is an important component in strengthening the set of information available to decision makers” (emphasis in original).

Summary:

The BLM is required to comply with Section 5 (“General Principles”) of Circular A-94, and has failed to do so in the Western Oregon PRMP/FEIS.

Response:

The BLM is not required to comply with Circular A-94. Circular A-94, by its own terms, does not apply to agency practices which are “prescribed by or pursuant to law, Executive Order, or other relevant circulars” (Circular A-94 § 4). A cost benefit analysis is not required under NEPA unless it is “relevant to the choice among environmentally different alternatives” (40 CFR § 1502.23). When such a discussion is relevant, “the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations” (*Id*).

The PRMP/FEIS was prepared in compliance with the Federal Land Policy and Management Act and the National Environmental Policy Act (PRMP/FEIS p. 3). The BLM analyzed and disclosed how the alternatives would affect the supply, demand, and value of goods and services derived from BLM lands, economic activity in the planning area, payments distributed to counties, contributions to economic stability in the planning area, the capacity and resiliency of different types of communities in the planning area, environmental justice, and budgetary costs

to the BLM (PRMP/FEIS pp. 590-738). The PRMP/FEIS provided detailed analyses of both monetized (market) and qualitative (non-market) estimates for supply, demand, and value for the resources and issues described above. *Id.* The BLM described the reasons and methods it used to estimate the monetized and qualitative values (PRMP/FEIS pp. 593-601).

Circular A-94 does not apply to agency practices governed by other law. The BLM prepared the PRMP/FEIS under FLPMA and NEPA, both of which are federal laws; accordingly, Circular A-94 does not apply and BLM is not required to comply with the Circular in the PRMP/FEIS.

Other Federal Laws, Policies & Regulations – OMB Peer Review Bulletin

Issue Number: PP-OR-RMPforWOr-16-11-12

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: OMB Peer Review Bulletin, pages 10-11.

Issue Number: PP-OR-RMPforWOr-16-11-15

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The above mentioned models can be considered Influential Scientific Information, per the OMB Bulletin, and thus require independent

scientific peer review - which the BLM clearly has not done. Each of these models is controversial and “Highly Influential”. These models are in fact the core body of critical aquatic science information and analysis being used by BLM to support increased timber outputs statewide.

Issue Number: PP-OR-RMPforWOr-16-11-17

Organization: Pacific Rivers / Coast Range Associates / Trout Unlimited / American Rivers

Protester: Greg Haller / Chuck Willer / Dean Finnerty / David Moryc

Issue Excerpt Text: The models and analytical methods used in the BLM RMP/EIS are indeed subject to peer review requirements of the OMB Bulletin if they are Influential Scientific Information and are “controversial and of significant interagency interest”.

Summary:

The models used by the BLM in the Western Oregon PRMP/FEIS are required by the OMB Peer Review Bulletin to undergo external peer review and the BLM failed to complete this review.

Response:

The BLM is not required to seek peer review of the PRMP/FEIS under the OMB Peer Review Bulletin. The Bulletin applies to scientific assessments, including “state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments” (Final Information Quality Bulletin for Peer Review, Office of Management and Budget, p. 11 of December 16, 2004). An EIS is not a publication of scientific research subject to peer review (BLM National Environmental Policy Act (NEPA) Handbook H-1790-1, p. 55).

The Peer Review Bulletin does not apply to the Western Oregon PRMP/FEIS, and the BLM is not required to seek peer review of the Western Oregon PRMP/FEIS.

Other Federal Laws, Policies & Regulations – Executive Order (EO) 13514

Issue Number: PP-OR-RMPforWOr-16-31-7

Organization: Lane County Audubon Society

Protester: Debbie Schlenoff

Issue Excerpt Text: Executive Order 13514 on Federal Leadership in Environmental, Energy, and Economic Performance (October 2009) directs Federal agencies to reduce greenhouse gas pollution. With respect to climate change, the order reads as follows: Bureaus should implement the following general approaches to enhance the ability of ecosystems and wildlife populations to absorb change and maintain key qualities and services:

- Develop adaptation plans that protect and restore contiguous blocks of un-fragmented habitat and enhance connectivity among habitat blocks.

- Identify and protect resilient ecosystems (i.e., places that can absorb change and maintain healthy community structure and function) and climate refugia (i.e., places that do not exhibit as much change as surrounding landscapes).

- Monitor invasive species (defined as alien species whose introduction does or is likely

to cause economic or environmental harm or harm to human health) and coordinate with other agencies to prevent new introductions and stop the spread of such species.

- Reduce non-climate stressors that interact with climate change impacts, e.g., pollution, invasive species, habitat fragmentation, and human activities contributing to resource scarcity or degradation of natural resources. Increased timber harvest and the addition of roads (over 400 miles of new roads built in the first decade) proposed in the management plan would not allow for protection of continuous blocks of un-fragmented land and would in fact, decrease connectivity. Mature forests function with a resiliency that is eliminated in clear-cut or heavily logged forests. Decreasing size of forest stands increases negative “edge effects” and reduces population sizes and species richness within areas. Logging activity and the additional roads allowed by the plan are both known to increase introduction and spread of invasive plants. Finally, the proposal does not reduce but, in fact, increases all the stressors mentioned including “human activities contributing to resource scarcity or degradation of natural resources.”

Summary:

The BLM is required to implement the provisions of Executive Order (EO) 13514 in the Western Oregon PRMP/FEIS and has failed to do so.

Response:

The BLM is not required to implement EO 13514 in the Western Oregon PRMP/FEIS. EO 13514 establishes a high level policy to create a clean energy economy (Executive Order No. 13514, 74 Fed. Reg. 52,117 (Oct. 8, 2009)). The EO establishes direction and goals for high level Executive Branch officials, primarily the Chair of the Council on Environmental Quality (CEQ), the Director of the Office of Management and Budget (OMB), and the Federal Environmental Executive (*Id.* at pp. 52,117-122). The EO does direct agencies to measure, manage, and reduce greenhouse gas emission toward agency defined targets for agency actions

such as vehicle fleet and building management (*Id.* at pp. 52,123-124). The EO does not “create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person” (*Id.* at pp. 52 and 126-127).

The plain language of EO 13514 does not apply to the Western Oregon PRMP/FEIS nor does the EO include the language cited in the protest letter. The EO does, as noted, establish high level policy, directed at specific individual positions within the Executive Branch. That policy is not directed at the local planning level. There is no provision within the EO that applies to the PRMP/FEIS.

The BLM is not required to implement EO 13514 in the Western Oregon PRMP/FEIS and therefore, the EO does not apply to the PRMP/FEIS.

Other Federal Laws, Policies & Regulations – National Indian Forest Resource Management Act (NIFRMA)

Issue Number: PP-OR-RMPforWOr-16-16-8

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: The Coquille Forest Act also requires that the Secretary manage the forest subject to the laws pertaining to Indian trust lands, including the National Indian Forest Resource Management Act, (“NIFRMA “), which calls for Indian forests to generate “continuous productivity and a perpetual forest business.” 25 USC § 3104 (b)(3) and which finds that, “the United

States has a trust responsibility toward Indian forest lands.” The BLM's selection of plan language directly, substantially and negatively affects the management of and the revenue generated from the Coquille Forest in violation of the Coquille Forest Act and the trust responsibility. There is no legal requirement that authorizes or obligates the BLM to restrict Coquille Forest management in the way indicated in the Proposed RMP, and to be clear, the proposed RMP provisions identified above both fail to be in the Tribe's best interests and conflict with the express purpose of NIFRMA.

Summary:

The Western Oregon PRMP/FEIS violates the National Indian Forest Resources Management Act as applied to the Coquille Forest.

Response:

The Western Oregon PRMP/FEIS is consistent with the obligations of the National Indian Forest Resources Management Act (“NIFRMA”). The purpose of NIFRMA is to “allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners” (25 USC § 3102(1)). Forest management activities by the Secretary on Indian forest lands are to be designed to achieve multiple objectives, including the development of Indian forest land in a “perpetually productive state in accordance with the principles of sustained yield” and the regulation of Indian forest lands to “make possible, on a sustained yield basis, continuous productivity and a perpetual forest business” (*Id.* at § 3104(b)(1) & (3)). NIFRMA provides the general requirements for management of Indian lands, and a forest specific management plan developed by the BIA and the Tribe prescribes the specific management of an individual forest (*Cascadia Wildlands et al. v. BIA*, Case No. 6:13-cv-1559-TC, slip op. at 2 (D. Or. March 19, 2014)).

As discussed in the responses to the Indian trust responsibilities previously in this response, the BLM is not making determinations on the land use allocations on the Coquille Forest (PRMP/FEIS p. 808). The BLM is further not making any decision on the amount or rate of timber harvest on the Coquille Forest (*Id.*). The Tribe and BIA retain the authority and discretion to develop a Coquille Forest management plan under NIFRMA (PRMP/FEIS, p. 809). The land use allocation decisions made by the Tribe and BIA will thus determine the harvest rate and

amount on the Coquille Forest. Therefore, the Western Oregon PRMP/FEIS does not conflict, and is consistent, with the requirements of NIFRMA.

Other Federal Laws, Policies & Regulations – MOU Violation

Issue Number: PP-OR-RMPforWOr-16-16-1

Organization: Coquille Indian Tribe

Protester: Brenda Meade

Issue Excerpt Text: More specifically, the WOTF recommended establishment of a Tribal Cooperative Management Area (“TCMA”), comprising 18,000 acres of Tribal and BLM lands. Acting in reliance on this recommendation, the Tribe in 2012 signed a 2012 Memorandum of Understanding with BLM (the “2012 MOU”) (Attached), stating, “[t]he parties wish to fulfill the recommendations of the WOPR Review Task Force relating to the Coquille Forest and surrounding BLM lands.” In the 2012 MOU the BLM promises to:

- Work with the Tribe to develop a TCMA proposal for Tribal/Federal cooperative

- management of the BLM lands in proximity to the Coquille Forest; and
- Mutually develop TCMA proposals to include in each action alternative of the upcoming RMP revision (i.e. the process leading to the current Proposed RMP).

Although the Tribe relied on the WOTF Report, intervening BLM actions and communications and the 2012 MOU to protest its vital interests in Coquille Forest timber revenue, the Proposed RMP abandons those commitments. The Proposed RMP includes no reference to any of these items, and it those prior commitments have been unilaterally dishonored and ignored. The Proposed RMP must be revised to be consistent with the recommendations of the WOTF report and the obligations of the 2012 MOU.

Summary:

The BLM has violated the commitments in the 2012 Memorandum of Understanding (MOU) with the Coquille Indian Tribe in the Western Oregon PRMP/FEIS.

Response:

The BLM has acted consistently with the Memorandum of Understanding (“MOU”) with the Tribe. The MOU identifies three specific actions to advance the purpose of the MOU:

- The Tribe will serve as a member of the Western Oregon (now Westside) Steering Committee;
- The BLM and the Tribe will work together in the development of a cooperative management area proposal for cooperatively managing BLM landscapes near the Coquille Forest; and
- The BLM will treat subject matter under the scope of the MOU as agency actions with Tribal implications.

(See MOU between the Coquille Indian Tribe and the Bureau of Land Management, pp. 2-3, June 6, 2012).

The MOU further identified three actions for carrying out the MOU:

- The Oregon/Washington BLM State Director or designee will convene and chair meetings as necessary to review progress of the MOU;
- The Tribe and BLM will mutually develop cooperative management area proposals to include in the next revision of the Coos Bay Resource Management Plan (RMP); and
- The Tribe and BLM will cooperate to advance final review and approval of the revision of the Coos Bay RMP (*Id.* at p. 3).

The MOU also codifies the agreement between the Tribe and BLM that the MOU is not legally binding, and does not expand or limit the “powers, duties, and authorities of either Party” (*Id.*). Further, the MOU does not create “any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by or against any person, party, the United States, its agencies or officers, or any participant” (*Id.* at p 4).

The BLM has met, and continued to meet its agreements under the MOU. The Tribe is a member of the Westside Steering Committee (PRMP/FEIS, p. 1044). The BLM and the Tribe worked to develop one of the alternatives (the riparian strategy) analyzed in the Western Oregon PRMP/FEIS (PRMP/FEIS, p. 1047). The BLM has engaged with the Tribe in discussing Tribal Cooperative Management Areas (Letter from Patricia Burke, District Manager, Coos Bay District, BLM, to Brenda Meade, Chairperson, Coquille Indian Tribe, June 10, 2015; letter from Brenda Meade, Coquille Indian Tribe, to Jerry Perez, State Director, Oregon/Washington BLM, February 14, 2014). The BLM has worked extensively with the Tribe to develop the PRMP/FEIS (PRMP/FEIS pp. 1043-45, 1613, 1623-25, 1631-32, 1636), including inviting the Tribe to participate as a cooperating agency (PRMP/FEIS p. 1044), exchanging a multitude of letters (July 18, 2012; February 24, 2014; March 13, 2014; October 17, 2014; June 10, 2015; and January 19, 2016), and conducting tribal listening sessions (PRMP/FEIS pp. 1631-32, 1636). The BLM has thus met all three actions to further the purpose of the MOU.

In addition, the BLM has met regularly with the Tribe, both independently and as cooperating agencies (PRMP/FEIS pp. 1631-32 and 1636); Letter from Patricia Burke, BLM, to Brenda Meade, Coquille Indian Tribe (October 17, 2014). As noted above, the BLM and the Tribe worked cooperatively to develop one of the riparian strategy alternatives analyzed in the Western Oregon PRMP/FEIS (PRMP/FEIS p. 1047). As noted above the BLM and the Tribe in discussing Tribal Cooperative Management Areas. Letters of June 10, 2015, and February 14, 2014. Finally, the BLM and the Tribe, through the Cooperating Agency Advisory Group, Tribal Working Group, and the Westside Steering Committee have cooperated to advance the review and approval of the Western Oregon PRMP/FEIS (PRMP/FEIS p. 1044). The BLM has thus met all three actions, and therefore all of the agreed-upon commitments, for carrying out the MOU.