

**RISK-BASED FACTORS TO BE CONSIDERED IN DECISIONS
TO FUND COORDINATION EFFORTS OR ON-THE-GROUND PROJECTS
INVOLVING NON-BLM LANDS**

A. Decision Requirements. State Offices must include the following factors in their analyses and decision documentation.

(1) Authority. You must ensure that the proposed coordination effort or project falls within the scope of available BLM authorities referenced in Attachment 1 to this IM.

(2) Assure that adequate funds are available. For multi-year projects, you must have a reasonable expectation that appropriations will be available for the life of the project. You may consider funding on-the-ground projects on non-federal public and non-BLM lands within the watershed only when funds from partners are unavailable or are insufficient to achieve restoration goals. You must also consider the degree to which funds appropriated to other federal agencies or from other sources for projects on non-federal and non-BLM land can be used to jointly fund the work. While cost-sharing from partners is not an absolute requirement for BLM funding, it is highly desirable and demonstrates partner commitment to the Watershed Restoration and Enhancement Agreement.

(3) Consequences of not funding. You must provide an explanation as to what would happen if the BLM decided to not fund the proposed project or action. Your discussion should focus on both the environmental effects and affects on stakeholders which could result.

(4) Viability. You must ensure that the project is achievable and that the desired outcome is able to be completed and measurable benefits derived. For example, what is the potential to improve the viability of listed or proposed species or species of special status on public land in the watershed?

(5) Determine the BLM's fair share. In general, the BLM will not pay more than half the total comprehensive cost for activities situated on non-BLM lands. For example, the BLM should not be the major contributor to clean up a county landfill, which would normally be the primary responsibility of the county. Similarly, the BLM should not be the primary payer to address damage caused by poor, past forestry practices on non-BLM timberlands. You should weigh the commitment of other cooperators (agencies, groups) to fund project design, implementation and/or maintenance through cost-sharing or contributions of goods and services. If the non-BLM site restoration or cleanup relates to a program covered by the Clean Water Action Plan, you should explain the extent to which other funding sources from partnering agencies or groups, or from responsible parties will be participating in the overall project, including what non-BLM sites they will clean up. You must provide the factual information supporting your conclusion that other parties cannot pay for the non-BLM site restoration or cleanup at issue.

(6) Benefits. The project must have direct benefit to habitat and other resources on public land administered by the BLM within the watershed. You may fund individual projects of lower priority projects (in terms of BLM benefits) if written documentation is made of the selection rationale and the information is included as a permanent part of the project records. Justification for funding of lower priority projects might include the fact that the project is ranked high in the cooperative watershed agreement, or by the watershed council, or that the funding is critical to future projects of greater benefit to BLM-administered lands.

(7) Compliance. You must ensure that the project meets all applicable federal, state, and local laws, regulations, policies and permit requirements [e.g., CERCLA, CWA, National Environmental Policy Act (NEPA), Resource Conservation and Recovery Act (RCRA), Endangered Species Act (ESA), Federal Property and Administrative Services Act, Grants and Cooperative Agreement Act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of January 2, 1971]. You must consult with the Solicitor's Office to address these requirements.

(8) Internal and Stakeholder Project Support. You must assess the degree of support the proposed project provides for prior BLM activities, expenditures and management objectives. All work on non-BLM lands must be consistent with existing Resource Management Plans; interim strategies for managing anadromous fish-producing watersheds in Oregon, Washington, Idaho and Northern California (PACFISH); the President's Forest Plan; or similar strategies and must support the overall goal of watershed restoration. You must factor the degree to which the proposed work meets the goals and objectives of the local Watershed Council's or similar entity's strategy for watershed management. (These goals and objectives must be compatible with the BLM's goals and objectives for managing resources on public land.). You must also consider the willingness of the cooperating landowner/manager to donate easement interests to the BLM or a participating nonprofit for the duration of the project.

(9) Wyden Factors: Projects considered for implementation under watershed restoration and enhancement agreements described under the Wyden Amendment must be identified through watershed analysis, ecosystem analysis or other appropriate methods of assessment or evaluation as high priority for restoring or enhancing resources on public land. The BLM offices are encouraged to consult with Resource Advisory Councils and Provincial Advisory Committees, Soil and Water Conservation Districts, and Watershed Councils, or similar entities in establishing project priorities or priority areas.

(10) Agreements: When the Wyden Amendment is applied, both the BLM and the local non-federal government agency or land owner are required to be signatories of a direct or indirect cooperative watershed restoration and enhancement agreement. All work must be consistent with the agreement. The landowner or manager, acting individually or as part of a group or other organization, must be a willing, voluntary participant. The landowner/manager should be willing to cooperate in the implementation and maintenance of the project; understand the terms and

conditions of the watershed restoration and enhancement agreement; agree to any post-project use limitations on lands and waters; and be committed to complying with the objectives of the project throughout the anticipated life span of work funded by the BLM.

As stipulated by paragraph (C)(2) of the Wyden Amendment, it is BLM's policy to enter into a legally binding agreement to protect the public investment on private lands, provided such terms and conditions are mutually agreed to by the BLM and the landowner. While it is not the intent of the BLM to always acquire a realty interest, it is the policy of the BLM to ensure that the landowner not be permitted to perform post-restoration or cleanup activities that would have the effect of un-doing the restoration or cleanup work. For example, the BLM would not want to spend its funds to restore or cleanup an AML site only to have the landowner initiate new mining activities that would detrimentally affect the areas of the site that were the subject of the project.

Contracts or other legally binding agreements entered into under the Wyden Amendment must meet all of its statutory criteria.

B. Implementation.

(1) Responsibilities. Subsequent implementing agreements may incorporate any instrument, including conveyance of an easement, other land use agreement, cooperative agreement, contract, or purchase order used for the purpose of defining mutual responsibilities and any terms and conditions for project installation or maintenance. The responsibilities of the cooperating landowner/manager in the protection of the public investment will be set forth in the terms and conditions of the appropriate instrument developed to implement the watershed restoration and enhancement agreement. You should consult with the Solicitor's Office on the choice and content of the appropriate instrument or agreement. Appropriate terms and conditions will be developed jointly by the BLM technical personnel designing the project and the acquisition and/or lands staff. The State Director will be responsible for assuring that the BLM's appropriations are being spent in the public interest and on projects that directly benefit the health of habitat and other resources on public land.

(2) Monitoring. Your contracting/assistance officer is responsible for monitoring compliance with the terms and conditions of any funding agreement. The technical project manager is responsible for monitoring project completion and may monitor overall effectiveness. This includes documenting that the project: (1) was completed as designed (implementation monitoring); (2) is achieving its intended results (effectiveness monitoring); and, (3) is correcting the water quality problem (compliance monitoring).