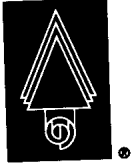


AF&PASM



AMERICAN FOREST & PAPER ASSOCIATION
Wood Products International

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January 11, 2008

Mr. Edward Sheppard
Oregon-Washington State Director
Bureau of Land Management
P.O. Box 2965
Portland, OR 97208

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Dear Mr. Sheppard:

On behalf of the American Forest & Paper Association, I am submitting the following comments on the Western Oregon Resource Management Plans. In general, we support the overall approach used to direct the plan revisions, and support adoption of the preferred alternative.

AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. The industry accounts for approximately 6 percent of the total U.S. manufacturing output, employs more than a million people, and ranks among the top 10 manufacturing employers in 42 states with an estimated payroll exceeding \$50 billion. AF&PA member companies own and manage timberlands directly adjacent to BLM O&C lands, and manufacture wood and paper products using timber from a wide variety of sources. Our members are concerned that inadequate management of Federal lands in general, and in the Pacific Northwest in particular, have placed both private timberlands and the wood using industry at risk. While not perfect, the preferred alternative comes closest to addressing these concerns in the narrow context of the O&C lands.

In considering the proposed plan revisions, two major considerations must be addressed. First, the plan revisions should reflect the most current understanding of the laws and regulations that govern management of Federal public lands. Second, the plan revisions should be evaluated on whether they will produce positive economic and ecological outcomes on the ground. We address the legal background for the decision-making process first.

Legal Considerations:

The 2.5 million acres of lands covered by the Western Oregon Resource Management Plans (RMP's) are governed by the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (the "O&C Act of 1937", Public Law 75-405). As you note, the 9th Circuit correctly held in *Headwaters v. BLM* (914 F.2d 1174 (9th Cir. 1990)) that the primary purpose of the O&C lands is for timber production in conformity with the provision of sustained yield. The court further stated that: (1) "Forest Production" under the O&C Act means timber production; (2) the O&C Act makes timber production the "dominant use" for the O&C lands; (3) the purposes of the O&C Act were to provide revenues to counties through timber harvests and insure reforestation of lands as they were harvested; (4) "sustained yield" means the amount of timber harvested does not exceed new growth; (5) exempting timber resources from harvesting to serve as wildlife habitat is inconsistent with the principle of sustained yield required by the O&C Act. The 9th Circuit found nothing in the legislative history to suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.

We are concerned that none of the proposed alternatives appears to fully acknowledge the dominant use of timber production established by the O&C Act. Alternative 2 comes closest to meeting the objectives of the O&C act, and still only allocates 48% of the landscape to timber production.

The dominant use requirement of the O&C Act trumps other considerations, including the Endangered Species Act. This principle was affirmed on June 25, 2008, when the US Supreme Court issued its opinion in *National Association of Home Builders, et al. v. Defenders of Wildlife, et al.*, (Nos. 06-340 and 06-549, 2007 WL 1801745). By a 5-4 vote, the Court overturned the Ninth Circuit decision, agreeing with the arguments made by AF&PA and other industry intervenors almost across the board. This decision reverses an expansive interpretation of the Endangered Species Act held by the Ninth Circuit.

The Court gave deference to the Services' interpretation of the ESA, as expressed in 50 C.F.R. § 402.03, which states that ESA section 7(a)(2) applies to agency "actions in which there is discretionary Federal involvement or control," finding this to be a reasonable interpretation of the ESA that avoids irreconcilable conflicts with other statutes. In its analysis, the Court considered "the statutory backdrop of the many mandatory agency directives whose operations [the ESA] would implicitly abrogate or repeal if it were construed as broadly as the Ninth Circuit did below," (Slip Opinion at 19). Thus, the Court held that ESA section 7(a)(2)'s "no-jeopardy duty covers only discretionary agency actions and is not attached to actions (like the NPDES permitting transfer authorization) that an

agency is required by statute to undertake once certain specified triggering events have occurred.” (Slip Opinion at 22).

The Court rejected the dissenters assertion, as urged by Defenders, that the Court’s 1978 opinion in the snail darter/Tellico Dam case, *TVA v. Hill*, 437 U.S. 153, held that Congress intended the ESA to supersede all other statutory directives where complying with such statutory directives would jeopardize listed species. The Court said that, while *TVA v. Hill* stands for the proposition that “the ESA’s no-jeopardy mandate applies to every discretionary agency action-- regardless of the expense or burden its application might impose,” it does not address at all the question about application of ESA section 7 to non-discretionary actions, which the Services addressed in 50 C.F.R. § 402.03, and which clearly includes the BLM’s non-discretionary duty to comply with the O&C Act.

We applaud the BLM for proposing to move management of the O&C lands closer to the statutory requirement that timber be the dominant use. If possible an additional alternative should be considered which fully implements the timber mandate of the O&C Act.

Economic and Ecological Considerations:

The management of the O&C lands must be evaluated as part of the larger forested landscape of Western Oregon. As you note, BLM is directly responsible for managing only 2.6 million acres out of the 22 million acres of forests in Western Oregon. Oregon has one of the strictest forest practices acts in the country, and State and local laws and regulations make conversion of forest to other uses extremely difficult. BLM’s proposed plan revision proposes exceedingly minor changes in the overall forest cover of the region, thus ensuring that forested landscapes will most likely continue to produce high quality wildlife habitat, clean water, and recreational opportunities that are highly valued by the public.

The proposed rates of harvesting on O&C lands vary insignificantly under any scenario. All alternatives produce less than 1% shift in structural stage abundance across all ownerships over 100 years. The entire range of alternatives contemplates annual harvest rates ranging from a low of 16,000 acres to a high of 29,000 acres, or 0.073% to 0.13% of the O&C lands total.

Likewise, habitat conditions under Alternative 2 largely improve. Alternative 2 increases Marbled Murrelet habitat by 439,000 acres over 100 years, while maintaining spotted owl habitat. The Alternatives vary only 3% in terms of fish productivity. For all four alternatives, less than 0.37% of subwatersheds experience any increased risk of peak flows. The revisions to the riparian buffer

strategy, in particular, represent a much better attempt to reconcile the protection of streams with the reality that large, unmanaged buffers can become susceptible to damaging, uncharacteristic wildfires, which can have devastating impacts on streams and upland habitats.

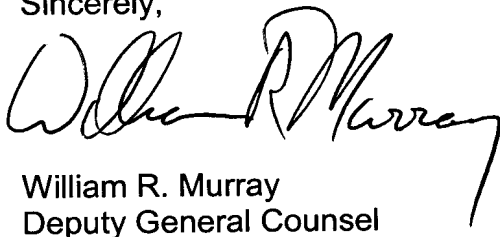
As noted above, we are concerned that none of the three alternatives presented in the DEIS fully meet the statutory requirements of the O&C Act because they do not establish timber management as the dominant use of the lands. Reserving more than half (52%) of the suitable timberland for the purpose of meeting the habitat needs of a listed species is contrary to the O&C Act. None of the alternatives produces the level of payments needed to meet the Secure Rural Schools Act receipts, but Alternative 2 produces 94% of the required receipts. Alternative 2 has the highest net revenues and highest net present value of all the alternatives.

Conclusion:

The BLM has undertaken, through the settlement agreement in AFRC v. Clarke, necessary steps to bring its' land management into closer compliance with the O&C Act. We believe the proposed plan revisions comport more closely with recent Supreme Court jurisprudence governing the Endangered Species Act. While the proposed plans do not move as far as we would like, they are a clear improvement over the existing situation. Overall, they still represent a very cautious approach to timberland management. We urge the agency to regard any accusations that the proposed plan is too aggressive with extreme caution.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "William R. Murray". The signature is written in a cursive style with a long, sweeping tail on the final letter.

William R. Murray
Deputy General Counsel