



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

COOS BAY DISTRICT OFFICE

1300 AIRPORT LANE, NORTH BEND, OR 97459

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## **In Reply Refer To:**

1792/6763 (ORC040)

DOI-BLM-OR-C040-2010-0006-DNA

Elk Creek In-stream

EA OR125-05-06

Paradise Creek Watershed Restoration EA

***June 9, 2010***

Dear Concerned Citizen,

We have signed the Decision Record for the Elk Creek In-stream Determination of NEPA Adequacy (DOI-BLM-OR-C040-2010-0006-DNA). The Proposed Action of this DNA is to restore fish habitat through increasing stream channel complexity by adding large diameter logs to the stream. The project is located on mainstem Elk Creek and adjoining tributaries at T. 28 S., R. 11 W., Sections 23, 27, 35 and 36. These documents have been posted on the District internet site: <http://www.blm.gov/or/districts/coosbay/plans/index.php>.

The decision to implement this forest management project may be protested under 43 CFR 5003 – Administrative Remedies. As outlined in 43 CFR 5003 (a) and (b), protests of a forest management decision may be made within 15 days of the publication date of the decision notice and shall contain a written statement of reasons for protesting the decision. In accordance with the regulations, this notice constitutes the decision document for the purpose of protests which must be filed by close of business (4:30 p.m.) on June 24, 2010 with the Myrtlewood Field Manager, *Kathy Westenskow*, at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459. As interpreted by BLM, the regulations do not authorize acceptance by the BLM of protests in any form other than a signed, paper document that is delivered to the physical address of the BLM office within the 15-day period. Therefore, e-mail, verbal, or facsimile protests will not be accepted.

For further information, contact Aimee Hoefs, Team Lead, at 1300 Airport Lane, North Bend, OR 97459 or (541) 756-0100, or e-mail at [OR\\_CoosBay\\_Mail@blm.gov](mailto:OR_CoosBay_Mail@blm.gov), Attn: Aimee Hoefs.

Respectfully,

*/s/ Kathy Westenskow*

Kathy Westenskow  
Myrtlewood Field Manager



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## DECISION RECORD for

### Elk Creek In-stream

#### Background

The Bureau of Land Management (BLM) previously prepared an Environmental Assessment (EA OR125-05-06 Environmental Assessment for the Paradise Creek Watershed Restoration Project) and Finding of No Significant Impact (FONSI) which contained analysis of the effects of placing large wood in stream channels to increase stream channel complexity. As was the case with the project in the original EA, the primary goal of the project in this Determination of NEPA Adequacy (DNA) is to “aid in the restoration of instream and riparian habitats by the placement of large wood in selected fish-bearing stream channels” (EA p.1).

#### Decision

It is my decision to authorize the stream restoration activities as described in the Elk Creek In-stream DNA (DOI-BLM-OR-C040-2010-0006-DNA). The environmental consequences from this type of project were fully analyzed in the original Environmental Assessment. The stream reaches to be treated are located on mainstem Elk Creek and adjoining tributaries at T. 28 S., R. 11 W., Sections 23, 27, 35 and 36.

The EA contained a complete list of Best Management Practices, Management Requirements, and Mitigation Measures (pp. 11-13) designed to avoid, minimize or rectify impacts on resources and are included as part of the Proposed Action. These and additional descriptions of the Proposed Action are hereby incorporated by reference. The following is a brief summary of some of these design features:

- Riparian canopy removal of hardwoods would be kept to the minimum necessary to ensure safety and efficiency of log placements by helicopter.
- Equipment access points would be kept to the minimum necessary to accomplish the work in a safe and efficient manner, and existing down wood and riparian vegetation would be protected to the extent practicable.
- Timing restrictions for all structure placements would be established to minimize impacts to marbled murrelets and northern spotted owls where possible.

## Conformance and Compliance

This project was developed under the management direction of the 1995 Coos Bay District Record of Decision and Resource Management Plan (1995 ROD/RMP). The analysis supporting this decision tiers to the *Final Coos Bay District Proposed Resource Management Plan/Environmental Impact Statement* (USDI 1994). This 1995 Record of Decision is also supported by, and consistent with, the *1994 Final Environmental Impact Statement on Management of Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* and its associated Record of Decision (USDA/USDI 1994).

This project fully complies with the management objectives, actions and direction of the 1995 RMP, as amended. These include:

**Design and implement watershed restoration projects in a manner that promotes long-term ecological integrity of ecosystems, conserves the genetic integrity of native species and attains the Aquatic Conservation Strategy. (p. 17)**

**Design and implement fish habitat restoration and enhancement projects in a manner that contributes to attainment of the Aquatic Conservation Strategy. (p. 30)**

This project also complies with the Oregon and California Lands Act (O&C Act), the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, the Clean Water Act, the Magnuson-Stevens Fishery Conservation Act and the BLM Special Status Species Program. The EA contained analysis that supported the findings in the FONSI that there would not be any significant impacts that would require the development of an EIS.

## Public Involvement

Scoping was conducted from January 30-March 1, 2006. One question was asked from an adjoining landowner that was answered to their satisfaction. The public was informed of the EA and FONSI through a direct notification on June 13, 2006 and via a published Legal Notice in *The World* newspaper. No comments were received. There was no appeal of the Decision to implement the project.

## Decision Rationale

Field Office staff has reviewed the Proposed Action. I have determined that this project meets the criteria for a Determination of NEPA Adequacy (DNA) and that no additional environmental analysis is required. The supporting analysis and NEPA Documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of NEPA.

I am choosing to implement the *Elk Creek In-stream* project for the following reasons:

- Implementation of the Proposed Alternative best meets the Purpose and Need described in the Environmental Assessment for the Paradise Creek Watershed Restoration Project.
- It is consistent with the 1995 *Record of Decision and Resource Management Plan* for the Coos Bay District of the Bureau of Land Management.
- It works towards the recovery of Federally-threatened fish species.
- It complies with other major applicable laws, regulations and Bureau policies.

The Elk Creek In-stream project is consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines, as incorporated into the Coos Bay District Resource Management Plan.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey et al.*, No 08-1067 (W.D. Wash.) (Coughenour, J.) granting Plaintiffs' motion for partial summary judgment and finding of a variety of NEPA violations in the BLM and USFS Record of Decision eliminating the Survey and Manage mitigation measure. Previously, in 2006, the District Court (Judge Pechman) had invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation had entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (hereinafter "Pechman exemptions").

Judge Pechman's Order from October 11, 2006 directs: "Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:

- A. Thinning projects in stands younger than 80 years old (emphasis added);
- B. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;
- C. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement of large wood, channel and floodplain reconstruction, or removal of channel diversions; and
- D. The portions of projects involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and manage requirements except for thinning in stands younger than 80 years old under subparagraph a. of this paragraph."

Following the Court's December 17, 2009 ruling, the Pechman exemptions are still in place. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects. Nevertheless, I have reviewed the Elk Creek In-stream project in consideration of both the December 17, 2009 and October 11, 2006 order. Because this project entails no regeneration harvest and consists of wood placement into stream channels, I have made the determination that this project meets Exemption C of the Pechman Exemptions (October 11, 2006 Order), and therefore may still be implemented even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision since the Pechman exemptions would remain valid in such case.

While conducting surveys for Special Status botany species, a Survey and Manage Category "A" lichen species, *Ramalina thrausta* (from the 2001 ROD), was discovered on conifer trees in many locations along the creek in Section 23. The older conifer trees along the creek are the

source of this lichen. Since no conifer trees will be cut during this project, this lichen species would remain unaffected.

### **Administrative Remedies**

The decision described in this document is a forest management decision and is subject to protest by the public. In accordance with Forest Management Regulations at 43 CFR Subpart 5003 Administrative Remedies, protests of this decision may be filed with the authorized officer *Kathy Westenskow* within 15 days of the publication date of the notice of decision advertisement in *The World*, Coos Bay, OR.

43 CFR § 5003.3 subsection (b) states: “Protests shall be filed with the authorized officer and would contain a written statement of reasons for protesting the decision.” This precludes the acceptance of electronic mail (email) or facsimile (fax) protests. Only written and signed hard copies of protests that are delivered to the Coos Bay District Office will be accepted. The protest must clearly and concisely state which portion or element of the decision is being protested and the reasons why the decision is believed to be in error.

43 CFR § 5003.3 subsection (c) states: “Protests received more than 15 days after the publication of the notice of decision or the notice of sale are not timely filed and shall not be considered.” Upon timely filing of a protest, the authorized officer shall reconsider the project decision to be implemented in light of the statement of reasons for the protest and other pertinent information to her. The authorized officer shall, at the conclusion of the review, serve the protest decision in writing to the protesting party(ies). Upon denial of a protest, the authorized officer may proceed with the implementation of the decision as permitted by regulations at 5003.3(f).

If no protest is received by the close of business (4:30 pm) within 15 days after publication of the decision notice, this decision will become final. If a timely protest is received, the project decision will be reconsidered in light of the statement of reasons for the protest and other pertinent information available, and the Coos Bay District Office will issue a protest decision.

For further information, contact Aimee Hoefs, Team Lead, at 1300 Airport Lane, North Bend OR 97459 or (541) 756-0100, or e-mail at [OR\\_CoosBay\\_Mail@blm.gov](mailto:OR_CoosBay_Mail@blm.gov) Attn: Aimee Hoefs.

Decision issued by:

*/s/ Kathy Westenskow*

*June 7, 2010*

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Kathy Westenskow  
Myrtlewood Field Manager

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Date