



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 (ORC030)

DOI-BLM-OR-C030-2013-0007-DNA

Johns Creek Culverts FY2013

June 17, 2013

Dear Concerned Citizen:

I have signed the decision record for the Johns Creek Culverts FY2013 analyzed in the Documentation of NEPA Adequacy (DOI-BLM-OR-C030-2013-0007-DNA). The proposed action of this DNA is to replace three culverts in the Johns Creek watershed for fish passage and road maintenance purposes.

The Bureau of Land Management (BLM) has posted this document on the BLM 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 July 3, 2013 with the Umpqua Field Manager at the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon, 97459. As interpreted by the 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, email, verbal, or facsimile protests will not be accepted.

For further information, contact Jennifer Feola, Team Lead, at 1300 Airport Lane, North Bend, Oregon, 97459 or (541) 756-0100, or email at BLM_OR_CB_Mail@blm.gov, Attn: Jennifer Feola.

Respectfully,

/s/ David H. Wash

David H. Wash

Acting Umpqua Field Manager



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Decision Record for DOI-BLM-OR-C030-2013-0007-DNA

Background

The Bureau of Land Management (BLM) previously prepared an environmental assessment (EA OR125-02-12 Coos Bay District Culvert and Stream Crossing Environmental Assessment) and a Finding of No Significant Impact (FONSI), which contained the analysis of the effects of replacing, removing, or modifying existing culverts at several locations within the boundaries of the Coos Bay District. As was the case with the projects in the original EA, the primary goal of the proposed action in this Documentation of NEPA Adequacy (DNA) is to restore, enhance, and maintain ecological functions by improving passage of aquatic organisms and reduce impacts from structurally failing culverts.

Decision

It is my decision to authorize the replacement of three culverts identified in the Johns Creek Culverts FY2013 DNA (DOI-BLM-OR-C030-2013-0007-DNA). The original environmental assessment contained a full analysis of the design features and environmental consequences from this type of project. There are three culverts considered in this DNA:

- 29-11-7.1 @ MP 0.3,
 - 29-11-7.1 @ MP 0.4,
 - 20-12-1.1 @ MP 0.3,
- (All within T. 29 S., R. 11 W., Section 7)

The EA contained a complete list of project design features (pp. 11-13) designed to avoid, minimize, or rectify impacts on resources and are included as part of this proposed action. These and additional descriptions of the proposed action are hereby incorporated by reference. The following is a brief summary of these design features:

- During construction, the BLM will use techniques designed to minimize sediment delivery and turbidity.
- Instream work will occur during instream work periods designated by the Oregon Department of Fish and Wildlife.
- Upon completion of construction activities, the BLM will stabilize all exposed soils and waste areas with a mixture of straw mulch and certified weed free, native grass seed.

Conformance and Compliance

The BLM developed the Coos Bay District Culvert and Stream Crossing EA 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).

The 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).

The Johns Creek Culverts FY2013 project is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, 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 a variety of NEPA violations in the BLM and USFS 2007 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 instream, 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 project 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 management requirements except for thinning of 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 Johns Creek Culverts FY2013 project in consideration of both the December 17, 2009 and October 11, 2006 order. Because the Johns Creek Culverts FY2013 project is a culvert replacement project, I have made the determination that this project meets Exemption B of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed 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.

I have reviewed the NEPA document for the *Johns Creek Culverts FY2013* project and have determined it is consistent with the Coos Bay District Resource Management Plan as amended by 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* (2001 ROD), as modified by the 2011 Settlement Agreement.

The culvert replacements are covered for Endangered Species Act consultation for listed fish species by the Reinitiation of the Endangered Species Act Section 7 Formal Programmatic Conference and Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Aquatic Restoration Activities in the States of Oregon and Washington (ARBO II), April 25, 2013, National Marine Fisheries Service, NWP-2013-9664.

This project complies with the Aquatic Restoration Biological Opinion from the U.S. Fish and Wildlife Service concerning the spotted owl and marbled murrelet (U.S. Fish and Wildlife Service, October 8, 2008 13420-2008-F-0118).

This project does not contain habitats for any special status species that require pre-disturbance surveys. Nor are there any species present that require protection of known sites. The BLM has designed this project to work towards the recovery of listed fish species, thus special status fish species would benefit from implementation of the project. Therefore, the *Johns Creek Culverts FY2013* project will not increase the likelihood of and need for listing any Special Status Species as identified in BLM Manual 6840 and BLM OR/WA 6840 Policy.

This project complies with the Coastal Zone Management Act and I have determined that there would be no adverse effects to Coastal Zone resources from implementing this project. There would be no effects to water quality and the Aquatic Conservation Strategy Objectives would be restored or maintained.

The *Johns Creek FY2013* project complies with the Clean Water Act, the National Historic Preservation Act, and the Clean Air Act. This project area does not contain any designated Wilderness, Wild & Scenic Rivers, Areas of Critical Environmental Concern, or prime or unique farmlands. There were no concerns identified regarding Cultural Resource Values, Native American Religious Concerns, or Environmental Justice Issues. The Coos Bay District Culvert and Stream Crossing EA (EA OR 125-02-12) resulted in a Finding of No Significant Impact (FONSI), thus development of an Environmental Impact Statement (EIS) is not required.

Public Involvement

The BLM informed the public of the EA and FONSI through a direct notification June 3, 2002 and via a published Legal Notice in *The World* newspaper (June 10, 2002). The BLM received one public comment that dealt with O&C plowback funds and decommissioning of roads. However, no substantive comments required a change to the EA or the FONSI determination. None of the subsequent 16 DNAs received public comments.

Decision Rationale

Field Office staff has reviewed the proposed action. Based on the Documentation of NEPA Adequacy, I have determined that the proposed action involves no significant impact to the human environment and no further 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 *Johns Creek Culverts FY2013* for the following reasons:

- Implementation of the proposed alternative best meets the purpose and need described in the Coos Bay District Culvert and Stream Crossing Environmental Assessment.
- It is consistent with both the *2008 Record of Decision and Resource Management Plan* and the *1995 Record of Decision and Resource Management Plan* for the Coos Bay District Bureau of Land Management.
- It works towards the recovery of fish species currently listed under the ESA.
- It complies with other major applicable laws, regulations, and Bureau policies.

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 within 15 days of the publication date of the notice of decision advertisement in *The World*, Coos Bay, Oregon.

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 p.m.) 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 Jennifer Feola, Team Lead, at 1300 Airport Lane, North Bend, Oregon, 97459 or (541) 756-0100, or email at BLM_OR_CB_Mail@blm.gov Attn: Jennifer Feola.

Decision issued by:

/s/ David H. Wash

June 17, 2013

David H. Wash
Acting Umpqua Field Manager

Date

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Coos Bay District

Worksheet
Documentation of NEPA Adequacy (DNA)

BLM Office: Coos Bay District, Umpqua Field Office
Tracking No.: DOI-BLM-OR-C030-2013-0007-DNA

A. Description of the Proposed Action: The proposed action is to replace two culverts to allow access to fish habitat for all juvenile and adult fish species present, and one culvert would be replaced within a stream without fish distribution.

Proposed Action Title/Type: **Johns Creek Culverts FY2013**
Location / Legal Description: T. 29 S., R. 11 W., Section 7
Rd No. **29-11-7.1 @ MP 0.3, 29-11-7.1 @ MP 0.4, and 29-12-1.1 @ MP 0.3.**

Proposed Action: The BLM would replace three culverts, one on the mainstem Johns Creek and two on tributaries to Johns Creek. All of the culverts are at risk of failure because they are undersized. All of the culverts are located within the North Fork Coquille 5th field watershed. The new culverts would be sized to pass a 100 year flow event and would provide unobstructed access to habitat above the culverts. The culverts are scheduled to be replaced during the summers of 2013-2015 depending on availability of funding.

Culvert 29-11-7.1 @ MP 0.3 is located on BLM road 29-11-7.1. The current culvert is rusted through, has holes and cracks in the metal, water running underneath the culvert, and an outlet drop of 1.1 feet. It is a partial barrier to juvenile and adult fish during winter flows and a complete barrier to juvenile fish during low flows. This culvert would be replaced with a 137"x87"x80' corrugated metal pipe-arch.

Culvert 29-11-7.1 @ MP 0.4 is also located on BLM road 29-11-7.1 and is partially rusted, with an outlet drop of 4 feet. It similarly is a partial barrier to juvenile and adult fish during winter flows and a complete barrier to juvenile fish during low flows. This culvert would be replaced with a 14'10"x14'0"x120' structural plate underpass pipe.

Culvert 29-12-1.1 @ MP0.3, located on BLM road 20-12-1.1, has water running underneath the culvert, an outlet that is rusted through, and a drop of 2.2 feet. Culvert 29-12-1.1 is not located on a fish-bearing stream. This culvert would be replaced with a 7'x80' corrugated metal circular pipe.

There are three areas identified as potential waste sites for material generated from the construction. The sites are stable and away from waterways. Any new fill material needed for construction may either be from a BLM borrow source that is stockpiled 3 miles from the construction sites or reject crushed rock from a nearby private or county quarry.

B. Land Use Plan (LUP) Conformance

The BLM developed this project 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 Supplemental Environmental Impact Statement (FSEIS) on Management of Habitat for 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).

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decisions:

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

As identified through watershed analysis, rehabilitate streams and other waters to enhance natural populations of anadromous and resident fish. Possible rehabilitation measures would include...fish passage improvements (p.30).

Reconstruct roads and associated drainage features that pose a substantial risk (p.69).

C. Identify applicable NEPA document(s) and other related documents that cover the proposed action.

List by name and date all applicable NEPA documents that cover the proposed action.

Coos Bay District Culvert and Stream Crossing Environmental Assessment. EA#OR125-02-12. (Stream Crossing EA)

List by name and date other documentation relevant to the proposed action (e.g., biological assessment, biological opinion, watershed assessment, project management plans, water quality restoration and monitoring report).

Reinitiation of the Endangered Species Act Section 7 Formal Programmatic Conference and Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Aquatic Restoration Activities in the States of Oregon and Washington (ARBO II). April 25, 2013. National Marine Fisheries Service. NWP-2013-9664.

Biological Opinion and Letter of Concurrence USDA Forest Service, USDI Bureau of Land Management and the Coquille Indian Tribe for Programmatic Aquatic Habitat Restoration Activities in Oregon and Washington that Affect ESA-listed Fish, Wildlife, and Plant Species and their Critical Habitats. June 14, 2007. U.S. Fish and Wildlife Service. TAILS Number 13420-2007-F-0055.

North Fork Coquille Watershed Analysis (USDI 2001)

D. NEPA Adequacy Criteria.

1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

The proposed actions are not located at sites specifically identified in the Stream Crossing EA. However, the design features and anticipated environmental consequences of the projects are essentially the same as those analyzed in the existing NEPA document. The EA contained analysis of the replacement of culverts at various locations across the District and a broad range of affected environments and environmental consequences were analyzed. The ground-disturbing activities, impacts to water and project timing (restricted to low-flow periods during summer months) involved in these projects are essentially the same.

2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the current proposed action, given current environmental concerns, interests, and resource values?

The range of alternatives analyzed was appropriate with respect to the *Johns Creek Culverts FY 2013* project. There were a range of alternatives considered. The current environmental concerns, interests and resource values have not changed.

3. Is the existing analysis valid in light of any new information or circumstances (such as, rangeland health standard assessment, recent endangered species listings, updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?

Since the development of the Stream Crossing EA, there are legal changes that have resulted in the re-instatement of portions of the Survey & Manage program. The *Johns Creek Culverts FY2013* project applies a 2006 exemption

from a stipulation entered by the court in litigation regarding Survey and Manage species and the 2004 Record of Decision related to Survey and Mitigation Measure in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash., Oct. 10, 2006). Previously, in 2006, the District Court (judge Pechman) invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Courts' 2006 ruling, parties to the litigation entered into a stipulation exempting certain categories of activities from the Survey and Manage standards and guidelines, including both pre-disturbance surveys and known site management. Also known as the Pechman exemptions, the Court'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;
- 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."

Per the 2011 Settlement Agreement, the 2006 Pechman Exemptions remain in force:

"The provisions stipulated to by the parties and ordered by the court in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006), shall remain in force. None of the following terms or conditions in this Settlement Agreement modifies in any way the October 2006 provisions stipulated to by the parties and ordered by the court in *Northwest Ecosystem Alliance v. Rey*, No. 04-844-MJP (W.D. Wash. Oct. 10, 2006)."

The *Johns Creek Culverts FY2013* project meets Exemption B because it consists of "replacing culverts on roads that are in use and part of the existing road system."

4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

Based on review by an interdisciplinary team (listed below), the anticipated direct and indirect effects of the proposed *Johns Creek Culverts FY 2013* project are essentially the same as identified in the Stream Crossing EA. The cumulative effects of implementing this action have been broadly discussed, particularly in regards to salmon recovery.

5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

The original EA had a 30-day comment period on the appropriateness of the FONSI, the one comment dealt with O&C plowback funds and decommissioning of roads. The previous 16 DNAs on culvert replacements did not receive any comments. This project will undergo a 15-day protest period.

E. Persons/Agencies/BLM Staff Consulted

<u>Name</u>	<u>Title</u>	<u>Agency/Resource Represented</u>
Jennifer Feola	Team Lead/ Fish Biologist	NEPA compliance/ T&E, SSS Fisheries
John Colby	Hydrologist	Hydrology
Greta Krost	Geologist	Water Quality, Soils
David Shanley-Dillman	Wildlife Biologist	T&E, SSS wildlife
Jenifer Sperling	Botanist	T&E, SSS plants
Stephan Samuels	Archaeologist	Cultural Values/Environ. Justice
Julia Jackson	Environmental Pro. Specialist	Hazardous Materials

Stephen Langenstein
Kaitlyn Bowman

Noxious Weeds Coordinator
Forester

Weeds
Forestry/Silviculture

Note: Refer to the EA for a complete list of the team members participating in the preparation of the original environmental analysis or planning documents.

Conclusion:

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA.

Signature of Project Lead /s/ Jennifer Feola Date: 06-11-13

Signature of NEPA Coordinator /s/ Steven Fowler Date: 06-11-13

Signature of the Responsible Official: /s/ Glenn R. Harkleroad Date: 06-11-13