



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-C030-2015-0003-DNA

Tioga Creek Instream Restoration Project

April 2, 2015

Dear Concerned Citizen,

I have signed the Decision Record for the Tioga Creek Instream Restoration Project analyzed in the Documentation of NEPA Adequacy (DOI-BLM-OR-C030-2015-0003-DNA). The Proposed Action of this DNA is to place logs and boulders in Tioga Creek to enhance fisheries habitat.

The BLM has posted this document at 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 04-24-15 with Todd Buchholz, the Umpqua Field Manager 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 Jennifer Feola, Team Lead, at 1300 Airport Lane, North Bend, OR 97459 or (541) 756-0100, or e-mail at BLM_OR_CB_Mail@blm.gov, Attn: Jennifer Feola.

Sincerely,

/s/ Glenn Harkleroad

For

Todd D. Buchholz

Umpqua Field Manager



United States Department of the Interior

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Tioga Creek Instream Restoration Project

Decision Record for DOI-BLM-OR-C030-2015-0003-DNA

Background

The Bureau of Land Management (BLM) previously prepared an Environmental Assessment (Paradise Creek Watershed Restoration Project: EA OR125-05-06) and a Finding of No Significant Impact (FONSI) which evaluated the effects of restoration of aquatic habitat in streams located in the Paradise Creek subwatershed, a large tributary to the Umpqua River. The action as described in DOI-BLM-OR-C030-2015-0003-DNA proposes placement of logs and boulders in Tioga Creek which is located in the Tioga Creek subwatershed. This proposed project is of like action and similar design to that analyzed in EA OR125-05-06.

Decision:

It is my decision to Tioga Creek Instream Restoration Project. The design features and actions of this project and the anticipated environmental consequences are essentially the same as those analyzed in the existing NEPA document.

Conformance and Compliance

This DNA is in conformance with the *Coos Bay District Resource Management Plan/Final Environmental Impact Statement* (USDI 1994) and its *Record of Decision* (ROD/RMP), as supplemented and amended. The Coos Bay ROD/RMP is supported by and consistent with the *Final Supplemental Environmental Impact Statement (EIS) on Management of Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl* (Northwest Forest Plan) (USDA and USDI 1994a) and its *Record of Decision* (USDA and USDI 1994b).

The Tioga Creek Instream Restoration 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 in-stream, and road or trail decommissioning; and where the stream improvement work is the placement 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 Camp Creek Instream Restoration Project in consideration of both the December 17, 2009 and October 11, 2006 order. Because the Camp Creek Instream Restoration Project is a stream improvement project, I have made the determination that this project meets Exemption C 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.

Instream restoration is 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 -NWP-2013-9664). April 25, 2013.

Instream restoration is also covered for Endangered Species Act consultation for listed fish species by the *Programmatic Biological Opinion for Aquatic Restoration Activities in the States of Oregon, Washington, and portions of California, Idaho, and Nevada* (ARBO II – FWS reference: 01E0FW00-2013-F-0090). July 1, 2013.

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 Environmental Assessment for the Paradise Creek Watershed Restoration Project (OR 125-05-06) resulted in a Finding of No Significant Impact (FONSI), thus development of an Environmental Impact Statement (EIS) is not required.

Public Involvement

The public was informed of the EA and FONSI through a direct notification and via a published Legal Notice in *The World* newspaper. The EA had a 30 day comment period, providing opportunity for the public or other agencies to comment on the proposed actions, and there were no comments.

Decision Rationale:

The proposed action has been reviewed by Resource Area Staff and appropriate project Design Features as specified will be incorporated into the proposal. Based on this review, I have determined that the proposed action is adequately analyzed in the existing NEPA document EA OR125-05-06 and is in conformance with the Coos Bay RMP and no further analysis is required.

I am choosing to implement the Tioga Creek Instream Restoration 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 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 this decision advertisement in *The World* newspaper, Coos Bay, Oregon.

43 CFR § 5003.3 subsection (b) states: "Protests shall be filed with the Authorized Officer and shall contain a written statement of reasons for protesting the decision." This precludes the acceptance of electronic mail (e-mail) 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 protests 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 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 available to him. 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 the 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 becomes final. If a timely protest is received, the protest decision will be reconsidered in light of the statement of reasons for the protest and other pertinent information available, and the Coos Bay District will issue a protest decision.

For further information, contact Jennifer Feola, Project Lead, at 1300 Airport Lane, North Bend OR, 97459 or (541) 756-0100.

Decision Issued by:

/s/ David H. Wash
for

Todd D. Buchholz
Umpqua Field Manager

April 3, 2015

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, Coos Bay Field Office **Tracking No.** DOI-BLM-OR-C030-2015-0003-DNA

Applicant (if any):

A. Description of the Proposed Action:

Proposed Action Title/Type: Tioga Creek Instream Restoration Project

Location / Legal Description:

Tioga Creek, located within the Tioga Creek 6th Field (HUC# 171003040106 Subwatershed.
T.27S., R.09W., Sections 6, 7, 8, 16, 17;
T.27S., R.10W., Sections 1, 12;
T.26S., R.10W., Section 36;
T.26S., R.09W., Section 31.

Proposed Action:

The project consists of placing approximately 100 log/ boulder structures. The structure placements would improve approximately 6 miles of spawning and rearing habitat in Tioga Creek for Coho Salmon, Chinook Salmon, steelhead trout, Cutthroat Trout (resident and sea run), Brook Lamprey, Pacific Lamprey and cottids (sculpin species). These structures would span between 10 to 50% of the total channel width at each site. The average channel width throughout the project reaches are between approximately 45 and 65 feet.

The log and boulder structures would be placed with an excavator or a cable yarding equipment. Materials would be delivered at the project sites by self-loaders, dump trucks or similar heavy equipment. Log lengths would range from approximately 20 feet to whole trees with and without rootwads and log/tree diameters would range from approximately 14 to 36" diameter at breast height (dbh).

Implementation of the project is expected to occur over a period of up to five years beginning in the summer of 2015.

The project reaches are entirely within forested lands managed by BLM and a private timber company. The Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 109-54, Section 434) authorizes the BLM to enter into cooperative agreements with willing participants for the protection, restoration, and enhancement of fish and wildlife habitat and other resources on public or private land. The Coos Watershed Association would administer the contracted work, obtain the materials for placement on private lands, and arrange for the delivery of materials to the project sites utilizing self-loaders, dump trucks or similar heavy equipment. The acquisition of logs and trees would be substantially the same as the PCWRP because they would originate from several sources (purchases/donations from local private or BLM sources).

The BLM would complete botany surveys for special status (SSS) lichens, bryophytes and vascular plant species on the BLM lands prior to project activities. Any SSS sites found would be protected according to recommendations of the botanist.

The BLM would complete evaluations for significant cultural resources within the project area prior to ground disturbing activities associated with this project. Any significant resources found would be protected according to recommendations of the cultural resource specialist.

This proposal is substantially similar to the proposed action of the Paradise EA (OR 125-05-06). Project implementation would follow applicable Best Management Practices, Management Requirements and Mitigation Measures listed on pages 11-13 of the EA.

B. Land Use Plan (LUP) Conformance

This project is tiered to and in conformance with the *Coos Bay District Resource Management Plan/Final Environmental Impact Statement* (USDI BLM 1994) and its *Record of Decision (ROD/RMP)*, as supplemented and amended. The Coos Bay ROD/RMP is supported by and consistent with the *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* (Northwest Forest Plan [NFP]) (USDA/USDI 1994) and its *Record of Decision* (USDA/USDI 1994a).

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

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 objectives (p. 17).

Promote the rehabilitation and protection of at-risk fish stocks and their habitat (p. 30).

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

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.

Environmental Assessment for the Paradise Creek Watershed Restoration Project: EA#OR125-05-06 (USDI 2005).

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-NWP- 2013-9664). April 25, 2013.

Instream restoration is also covered for Endangered Species Act consultation for listed fish species by the Programmatic Biological Opinion for Aquatic Restoration Activities in the States of Oregon, Washington, and portions of California, Idaho, and Nevada (ARBO II – FWS reference: 01EOFW00-2013-F-0090). July 1, 2013.

South Fork Coos 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 Tioga Creek Instream Restoration Project is essentially the same as the action alternative analyzed in the *Paradise Creek Watershed Restoration Project Environmental Assessment* (PCWRP EA). Contractors would place logs and boulders by the same means, in similar stream channels, and in similar configurations as those in the Paradise Creek watershed restoration project.

The proposed project stream reaches are not in the same analysis area of the Paradise Creek Watershed Restoration Project, but the physical and biological resources in the proposed project areas are similar to those analyzed in the EA. The Affected Environment chapter of the PCWRP EA (pp. 14-20) provides comprehensive analysis of the proposed action on fisheries values, Special Status Species (aquatic, terrestrial and botany), aquatic habitat conditions, stream channels, flood plains, water quality, geology, soils, riparian conditions, botany species and other resource values and physical conditions specific to the analysis area that would be affected. Because the PCWRP analysis area included both public and private lands at a broad, 6th field watershed scale encompassing approximately 12 miles of 4th to 6th order¹ fish-bearing streams occurring on agricultural lands, second growth timber and late successional stands, a considerable range of environmental conditions were analyzed in the EA. As described below, the environmental conditions and habitat conditions of the proposed project areas are within the scope of those analyzed in the EA.

The Environmental Consequences chapter of the PCWRP EA (pp. 22- 35) describes the anticipated and potential effects of over 60 instream structure placements involving logs, whole trees, boulders and gravel utilizing heavy equipment, helicopters and cable yarding at a large, 6th field watershed scale and throughout a wide range of instream and riparian habitat conditions. Both the long-term beneficial and short-term negative effects of the work would be similar in nature, geographic scale, and duration as those described in the EA.

Watershed analyses and stream habitat inventories conducted by the Oregon Department of Fish and Wildlife show that riparian and instream habitat conditions in the proposed project area are similar to those in the PCWRP analysis area. As described in the EA, stream substrate throughout much of the PCWRP was of poor quality for salmonids and other aquatic-dependent species but in the headwater areas some of the tributaries had a higher component of gravel substrate on riffles. Most of the Tioga Creek project reach has ample spawning gravel, but is lacking in large wood. NOAA Fisheries considers the properly functioning condition for large wood in western Oregon to be a minimum of 50 pieces per mile, 24-inch diameter, and 50-feet in length. Like the streams within the PCWRP EA, the current instream wood condition of Tioga Creek is substantially less than NOAA's recommendations.

Fish-bearing streams in the PCWRP analysis area where stream enhancement structures were placed included a total of 12 miles within 4th, 5th, and 6th order streams. The Tioga Creek project would place structures within approximately 0.25 miles of 4th order streams, 3.5 miles of 5th order streams, and 2.2 miles of 6th order streams. In the Paradise Creek Watershed Restoration Project, boulder structures and gravel were placed in 5th and 6th order streams with gradients less than approximately 1.0%. The proposed log/boulder structures in Tioga Creek would be placed in low gradient reaches (0.8 – 2.0%) with bankfull channel width between 45 to 65 feet.

Based on riparian vegetation inventory information, numerous reaches in the PCWRP have been identified as having a red alder-dominated overstory canopy, the majority of which is believed to be the result of human disturbance activities. This is true of the proposed project reaches, and even those occurring in late-successional stands have a large component of red alder and salmonberry understories near the stream channels.

The geology and soils are similar between the PCWRP and the Tioga Creek project. Rocks in both are dominantly sedimentary from marine and river processes that have shaped the Oregon Coast over geologic time. Both project areas are located in the Tyee sedimentary basin. The soils in both project areas are primarily formed from rocks of the Tyee geologic formation. While there are some differences in soil types, there would be no measurable impacts to soils because of the implementation of the same Best Management Practices (BMPs) for soil stabilization included in the EA

Like the PCWRP, some logs placed in the project reaches would originate from private sources. Logs placed on BLM lands would come from BLM lands adjacent to existing roads in the Tioga Creek subwatershed. A wildlife biologist will be fully involved in all tree-removal planning efforts to decide whether individual trees are suitable for wildlife nesting or have other important ESA listed bird habitat value. Trees will be chosen using ARBO II guidelines. Contractors would tip trees over with a truck mounted cable yarder, yard them into nearby stream placement sites or to the road and use a self-loader to stage the logs closer to placement sites.

¹For purposes of this document, stream "orders" are classified by the Strahler method. The smallest headwater tributaries are called first-order streams. Where two first-order streams meet, a second-order stream is created; where two second-order streams meet, a third-order stream is created; and so on.

Stream order is an important characteristic of stream systems because it relates to drainage area, stream size, and the expected ecological functions of a stream system.

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 Tioga Creek project. The only alternatives considered in the PCWRP EA were the action and no-action alternatives. The current environmental concerns, interests and resource values have not changed. For more information, see the “Alternatives Considered in this Analysis” starting on page 8 of the EA.

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?

There are no new circumstances that would substantially change the analysis in the PCWRP EA. The manner in which the project would be implemented is consistent with the 2013 ARBOs and Essential Fish Habitat (EFH) requirements. The same daily and/or seasonal timing restrictions to minimize impacts to wildlife species that applied to the PCWRP would also be adhered to as prescribed by the U.S. Fish and Wildlife Service.

Since the development of the Paradise EA, there have been legal changes that have resulted in the re-instatement of portions of the Survey & Manage program. The BLM is operating under the October 11, 2006, Court stipulation that allowed certain projects to go forward while the legal issues of the case are being resolved. The following exemption allows this project to go forward without conducting pre-ground disturbing surveys for Survey & Manage species: “Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and the stream improvement work is the placement of large wood, channel and floodplain reconstruction, or removal of channel diversions.”

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?

The analysis of direct and indirect impacts starts on page 22 of the Paradise EA. The Paradise EA contains analysis of the effects of log, boulder, and gravel placement by the same methods in this proposed action. The outcome of the Paradise Creek project demonstrated that the prescribed management practices, management requirements and mitigation measures in the EA achieved the desired objectives. These same practices, requirements, and measures would be applied to the Tioga Creek project.

Based on review by an interdisciplinary team (listed below), the anticipated direct and indirect effects of the proposed Tioga Creek project are essentially the same as identified in the Paradise EA. The EA included a broad discussion of the cumulative effects of implementing this action, 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 NEPA document underwent scoping and a full environmental review, with no issues identified that required additional analysis (see page 5 of the EA). In general, the public supports conducting stream restoration projects that work toward the recovery of listed fish species and improve water quality.

The proposed project would be implemented in cooperation with the Coos Watershed Association, Oregon Department of Fish and Wildlife, Coos Bay BLM, and Campbell Global. Like the PCWRP, the County Planning Department, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of State Lands and the U.S. Army Corps of Engineers would review the project through the permitting process

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/ Jen Feola

Date: April 3, 2015

Signature of NEPA Coordinator

/s/ Heather Partipilo

Date: April 6, 2015

Signature of the Responsible Official: /s/ David Wash

Date: April 3, 2015

