

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
EUGENE DISTRICT OFFICE

DECISION RECORD

DOI-BLM-OR-E060-2012-0005a-EA
Second Show Timber Sale Decision Record

DECISION

Based on the analysis documented in the 2014 Project - Second Show Final EA (DOI-BLM-OR-E060-2012-0005a-EA) and the FONSI, it is my decision to implement Alternative 3 for the Second Show Timber Sale as described in the Final EA, including all applicable project design features (PDFs).

PLAN CONFORMANCE

The 2014 Project - Second Show is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the 1995 Eugene District Resource Management Plan. This project implements (is tiered to) the Final Environmental Impact Statements for the Eugene District Resource Management Plan (1995), as amended, as well as all documents contained in the Second Show project file. This **Environmental Assessment** (EA) is tiered to these documents as permitted by the National Environmental Policy Act (NEPA) (40 CFR 1502.20).

In December 2009, the District Court for the Western District of Washington issued an order on partial summary judgment in favor of the Plaintiffs finding inadequacies in the National Environmental Policy Act (NEPA) analysis supporting the "Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl" (BLM et al. 2007) (2007 ROD). The District Court did not issue a remedy or injunction at that time.

Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement adopted by the District Court on July 6, 2011.

The Defendant-Intervenor subsequently appealed the 2011 Settlement Agreement to the Ninth Circuit Court of Appeals. The April 25, 2013, ruling in favor of the Defendant-Intervenor remanded the case back to the District Court.

On February 18, 2014, the District Court vacated the 2007 RODs. Vacatur of the 2007 RODs resulted in returning the BLM to the status quo in existence prior to the 2007 RODs.

The District Court and all parties agreed that projects begun in reliance on the Settlement Agreement should not be halted. The District Court order allowed for the Forest Service (FS) and Bureau of Land Management (BLM) to continue developing and implementing projects that met the 2011 Settlement Agreement exemptions or species list as long as certain criteria were met. These criteria include:

- 1) projects in which any Survey and Manage pre-disturbance survey has been initiated (defined as at least one occurrence of actual in-the-field surveying undertaken according to applicable protocol) in reliance upon the Settlement Agreement on or before April 25, 2013;
- 2) projects, at any stage of project planning, in which any known site (as defined by the 2001 Record of Decision) has been identified and has had known site-management recommendations for that particular species applied to the project in reliance upon the Settlement Agreement on or before April 25, 2013; and
- 3) projects, at any stage of project planning, that the BLM and FS designed to be consistent with one or more of the new exemptions contained in the Settlement Agreement on or before April 25, 2013.

This project is consistent with Criteria 1 because first field records for pre-disturbance surveys for the Survey and Manage species, Oregon red tree vole, occurred on May 18, 2012.

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;
- 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 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 District Court's December 17, 2009, ruling, the Pechman exemptions still remained in place. The 2014 Project - Second Show has been reviewed in consideration of both the December 17, 2009, partial summary judgment and Judge Pechman's October 11, 2006, order. Stands proposed for thinning under this EA are less than 80 years old. These stands meet Exemption A of the Pechman Exemptions (October 11, 2006, Order), and therefore may still proceed to be offered for sale 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. Stands proposed for regeneration harvests, regardless of age, do not meet Exemptions under Pechman. Surveys were conducted in these stands in accordance to current rulings and regulations.

RATIONALE FOR SELECTION

I have selected Alternative 3, the Modified Proposed Action, because I believe it best fits the purpose and need for action as presented in the Final EA, best provides a balance in the concerns expressed through public comments, and provides the best cost-benefit ratio of timber harvesting costs (both short and long term) and impacts to natural resources. In making this decision, I have considered comments we received and responded to over the course of this project, and all analysis conducted by the Second Show Interdisciplinary Team presented in the Final EA and Finding of No Significant Impact.

Forest management in the Second Show Timber Sale will implement regeneration harvest and thinning management on Matrix lands, which will provide and help to create a sustainable supply of timber. This management is designed to treat root rot infestations in the sale area as described in the Final EA. It will also apply silvicultural treatments on three acres of Riparian Reserves, managing stocking and species composition.

I did not select Alternative 1 because it did not meet the purpose and need as outlined in the Final EA (pg. 1).

I did not select Alternatives 2 or 4 because I believe Alternative 3 best meets the purpose and need, better addresses public concerns received, and provides for a better cost benefit ratio for the sustainable harvest of timber.

CONSULTATION AND COORDINATION

ESA consultation considers effects to general habitat due to habitat modification, and effects to site occupation and reproduction due to habitat modification and nesting behavior due to noise disturbance/disruption. Collectively these considerations result in an overall effects determination of

project actions. Consultation was conducted under the following batched Province BA: *Biological Assessment of NLAA Projects with the Potential to Modify the Habitat of Spotted owls: Willamette Planning Province – FY2014.*

It was determined that Alternative 3 would result in a “may affect, but not likely to adversely affect” determination for the Second Show Timber Sale units.

PUBLIC INVOLVEMENT

Public scoping was conducted in Spring 2012 and July 2012, with a public field trip to the project area August 2012. The EA was released in March 2014. All public comments were addressed in revisions to the Final EA, which was released July 2014.

IMPLEMENTATION

Implementation for this Decision Record is anticipated to begin in September 2014.

ADMINISTRATIVE REMEDIES

The decision to implement this project may be protested under 43 CFR 5003 - Administrative Remedies. In accordance with 43 CFR 5003.2, the decision for this project will not be subject to protest until the notice of sale is first published in the Eugene *Register-Guard*. This published notice of sale will constitute the decision document for the purpose of protests of this project (43 CFR 5003.2b). Protests of this decision must be filed with this office within fifteen (15) days after first publication of the notice of sale. As interpreted by BLM, the regulations do not authorize the acceptance of protests in any form other than a signed, written hard copy that is delivered to the physical address of the BLM Eugene District Office. 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.

Signature of the Responsible Official:

/s/ William O’Sullivan
William O’Sullivan
Upper Willamette Resource Area Manager
Eugene District Office

8/19/14
Date: