

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 July 2014 Second Show Final EA (DOI-BLM-OR-E060-2012-0005a-EA), April 2015 revised cumulative effects analysis, and the signed Finding of No Significant Impact (FONSI) made available with this Decision Record; it is my decision to reaffirm my August 2014 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 Criterion 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). Stands proposed for regeneration harvests, regardless of age, do not meet Exemptions under Pechman. Surveys were conducted in these stands in accordance with the court orders above and applicable regulations and management direction.

### **RATIONALE FOR SELECTION**

I am reaffirming my selection of Alternative 3, the Modified Proposed Action, because I believe it best fits the purpose and need for action as presented in the Final EA and revised cumulative effects analysis, 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, and I find that it meets all applicable statutory and regulatory duties and management direction. 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 revised cumulative effects analysis, and documentation disclosed in the Finding of No Significant Impact.

Forest management in the Second Show Timber Sale under Alternative 3 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 and revised cumulative effects analysis. It will also apply silvicultural treatments on three acres of Riparian Reserves, managing stocking and species composition.

I did not select Alternative 1 (No Action) because it does not meet the purpose and need as outlined in the Final EA (pg. 2). Specifically, because Alternative 1 would not implement any timber harvest, it would not provide a sustainable supply of timber. Additionally, it would not manage the spread of the root rot pathogen and increase the economic stability of the stand through improvement of stand health. It would also not implement actions to increase the proportion of merchantable volume and promote the development of understory vegetation. Because Alternative 1 would meet none of these elements of the Purpose and Need, I did not select it.

I did not select Alternatives 2 or 4 because they did not best meet the purpose and need, and also did not most effectively balance addressing public concerns received, thereby not providing for a better cost-benefit ratio while supplying a sustainable harvest of timber. Alternatives 2 and 4 did not best balance addressing public concerns raised, which covered both requests for additional acres harvested and requests for minimal timber extraction in providing for habitat. Alternative 2 would have provided the lowest acres harvested of the three alternatives in the harvest openings and placed the highest number of acres into reserve status. Conversely, Alternative 4 harvested the highest number of acres and placed the lowest number of acres into reserve status. Neither of these alternatives better balanced conflicting public concerns than does Alternative 3. Additionally, Alternative 4 would not best address the purpose and need to promote forested stand health and manage for root rot. Dispersed retention would retain host tree species (Douglas-fir) of the pathogen throughout the stand. Higher dispersal of Douglas-fir retained across a greater number of acres in the project area would likely increase the mass of the disease in the reforested stands (FEA, p. 20).

### **CONSULTATION AND COORDINATION**

Endangered Species Act consultation considers effects to threatened and endangered species, in this project the northern spotted owl, due to habitat modification of general habitat, and effects to site occupation and reproduction due to habitat modification and nesting behavior due to noise disturbance/disruption. The BLM determined that the proposed federal action would affect (as the ESA uses the term) the northern spotted owl. Accordingly, the BLM initiated and completed consultation with the U.S. Fish & Wildlife Service (USFWS) in the *Biological Assessment of NLAA Projects with the Potential to Modify the Habitat of Spotted Owls: Willamette Planning Province – FY 2014*.

The BLM determined that Alternative 3 would result in a “may affect, but not likely to adversely affect” determination for the Second Show Timber Sale units due to habitat modification and disturbance, and the USFWS concurred with that determination in writing through a Letter of Concurrence on the above-titled Biological Assessment (2013; pp. 43-44, 46-48, 82-83).

### **PUBLIC INVOLVEMENT**

Public scoping was conducted in Spring 2012 and July 2012, with a public field trip to the project area in August 2012. The EA was released in March 2014. All public comments were addressed in revisions to the Final EA, which was released in July 2014. I issued my decision to implement Alternative 3 in August 2014. Cascadia Wildlands, Oregon Wild, and Klamath Siskiyou Wildlands Center filed a protest untimely in September 2014 on this decision, and I was unable to consider this protest (43 CFR 5003.3(c)). The protestants appealed this to the Interior Board of Land Appeals in October 2014. This appeal was dismissed by the Interior Board of Land Appeals in February 2015 on the grounds that the appellants had not filed a timely protest. In January 2015, prior to the Interior Board of Land Appeals dismissal, Cascadia Wildlands and Oregon Wild jointly filed a lawsuit captioned *Cascadia Wildlands et al. v. BLM*, 6:15-cv-00079-TC (D. Or.), in the U.S. District Court for the District of Oregon challenging the Second Show Timber Sale. This litigation is currently stayed. In April 2015, I voluntarily elected to conduct a revised cumulative effects analysis to more explicitly disclose and consider the potential interrelationship between the effects of the 2014 Thinning timber sales in the watershed and those projected to result from the Second Show Timber Sale. This revised cumulative effects analysis was released for a two-week comment period. The nature of comments received and responses to subject-matter presented are discussed below.

### **RESPONSE TO PUBLIC COMMENTS**

I voluntarily elected to conduct a revised cumulative effects analysis for the Second Show Timber Sale in April 2015. The revised cumulative effects analysis received two comments: one from the American Forest Resource Council and one from both Cascadia Wildlands and Oregon Wild. The comment from the American Forest Resource Council was supportive of the revised analysis and implementation of the timber sale, and so no further response is necessary. The comment from Cascadia Wildlands and Oregon Wild contained two overall themes to which I will respond.

**Summary of the Comment Received:** The watershed does not meet the 15 percent retention requirement of the Northwest Forest Plan and BLM is violating this standard by failing to retain these older forest stands; BLM's revised cumulative effects analysis fails to consider the cumulative effect on mature forest at the fifth-field watershed scale; in failing to have considered this issue, BLM has allegedly failed to take a hard look at the matter as is required under NEPA.

**Response:** The intention and scope of the 15 Percent Rule are described in the Northwest Forest Plan Standards and Guidelines on page C-44:

*“The distribution of old-growth stands throughout the landscape is an important component of ecosystem diversity, and plays a significant role in providing for biological and structural diversity across the landscape. Isolated remnant old-growth patches are ecologically significant in functioning as refugia for a host of old-growth associated species, particularly those with limited dispersal capabilities that are not able to migrate across large landscapes of younger stands. These include, but are not limited to, many species of fungi, lichens, bryophytes, arthropods, and vascular plants, and will likely include vertebrate species such as small mammals and amphibians, and various bird species. Isolated patches will function as refugia where old-growth associated species are able to persist until conditions become suitable for their dispersal into adjacent stands. Loss of these old-growth stands may result in local extirpation of an array of species. It is prudent to retain what little remains of this age class within landscape areas where it is currently very limited. This will ensure future options for management and enhancement of the diversity within adjacent developing stands.*

*Landscape areas where little late-successional forest persists should be managed to retain late-successional patches. **This standard and guideline will be applied in fifth field watersheds (20 to 200 square miles) in which federal forest lands are currently comprised of 15 percent or less late-successional forest.** This assessment should include all allocations in the watershed. Within such an area, all remaining late-successional stands should be protected. Protection of these stands could be modified in the future, when other portions of the watershed have recovered to the point where they could replace the ecological roles of these stands.”* [emphasis added].

BLM reviewed the stands in the Mohawk watershed for the percentage of federal land (which is entirely BLM land<sup>1</sup>) in late-successional condition according to the assessment process identified in IM OR-98-100. This process provides that only stands greater than 10 acres are considered as contributing towards late-successional forest in consideration of the composition within the watershed. It also clarifies that management of these late-successional stands is not precluded, but cannot reduce the overall percentage below 15 percent. The review of the Mohawk watershed identified that 21 percent, or 5,391 acres, of federal land (which is entirely BLM land) within the watershed was in late-successional condition (80 years and older) based on stand ages in 2014 (Watershed FOI Planning Spreadsheet). Stands in the Second Show Timber Sale area were artificially and naturally regenerated approximately 70 to 80 years ago, and approximately 225 acres under Alternative 3 contribute to late-successional forest in consideration of this Northwest Forest Plan Standard and Guideline within the timber sale area. This amount of regeneration forest management included with Alternative 3 could not reduce the total percentage of late-successional forest in the watershed below 15 percent, as regeneration harvest of the 225 acres would reduce the percent of late-successional forest on federal land within the watershed by just 0.8 percent. Contrary to the public comment then, BLM did not fail to consider this Northwest Forest Plan Standard and

---

<sup>1</sup> The Mohawk Watershed Analysis (1995) identifies 91 acres of “U.S. Govt. (other)” within the watershed and displays two identifiable parcels on the ownership map. Current mapping does not show any other federal ownership within the watershed.

Guideline in project planning or analysis, and management actions under the selected alternative will retain late-successional forests well above the 15 percent requirement.

NEPA requires that the BLM take a “hard look” at potential environmental impacts and reasonable alternatives to proposed actions before coming to a final decision on such actions. It does not direct an agency to elevate environmental concerns above other considerations. BLM uses an issue-based approach to identify those issues on which to focus detailed analysis in order to conduct a hard look at potential environmental impacts. Identification of such issues focus BLM’s analysis on examination of the most salient categories of possible effects from the action(s) in question and are meant to avoid amassing of needless detail (40 CFR 1500.1(b)). In accordance with this approach, BLM met its requirement to take a “hard look” at potential environmental impacts of the Second Show Timber Sale in large measure by analyzing 5 issues in detail and another 5 issues not in detail. Effects on mature forest within the watershed were not identified as one of the five primary issues that warranted explicit, detailed analysis in the EA because:

- the BLM examined the percentage of late-successional forest on BLM land within the watershed and found that the Mohawk watershed was well above the Northwest Forest Plan required 15 percent;
- the Northwest Forest Plan and 1995 Eugene RMP and their associated EISs already evaluated the cumulative effects across the landscape of having lands, including those found within the Second Show Timber Sale, designated as Matrix lands with a primary purpose of supporting sustained-yield timber production and projected the cumulative effects of Matrix timber harvest to the overall maintenance of late-successional forests across the landscape once stands like those in the Second Show Timber Sale reached their current age and were ready for harvest (NWFP EIS at 3&4-39 to 3&4-49; 1995 Eugene RMP FEIS at 4-106 to 4-119;
- to date, the Eugene District BLM has harvested only 35% of projected acres of regeneration harvest over the life of the 1995 RMP and the Second Show Timber Sale would equate to an additional 2.5% of this projection, demonstrating that the Sale’s effects to mature stands are clearly within the NWFP and 1995 Eugene RMP EISs’ projection of cumulative effects of matrix regeneration harvest to late-successional stands;
- the stands within the Second Show Timber Sale are infested with root rot disease, and management of these stands for stand health and prevention of the spread of pathogens is included in direction from the Eugene 1995 Resource Management Plan (p. 84).

For these reasons, and given that there is no general management direction or objective to retain late-successional forests on Matrix lands and that the percentage of BLM lands in late-successional forest condition within the watershed is above 15 percent, and as no actions under the analysis would reduce the percentage below 15 percent, there is no substantial question whether impacts to mature forest stands from this project present meet the criteria to be considered as a potentially significant issue justifying detailed analysis in the EA under NEPA.

**Summary of the Comment Received:** BLM's supplemental cumulative effects analysis was biased and prejudged because of the existing timber sale contracts; BLM should have cancelled the timber sale contracts before proceeding with supplemental NEPA analysis.

**Response:** BLM undertook the supplemental cumulative effects analysis for the Second Show Project in good faith and with an open mind to undertake appropriate action based upon the results of that supplemental analysis, up to and including contract cancellation if the analysis had warranted such action. Unlike the situation in the case cited in footnote 3, page 2 of the comment letter, *Or. Natural Res. Council Action v. United States Forest Serv.*, 445 F. Supp. 2d 1211, 1219 (D. Or. 2006), BLM has not asserted that the existing contracts preclude supplemental NEPA--in fact, the supplement shows BLM has taken the opposite approach and agrees that supplemental NEPA was warranted. Where we diverge is that supplemental NEPA analysis can occur without cancelling existing contracts or decisions. This happens all the time in federal agencies' administration of NEPA and adopting the opposite would likely cause significant disruption of federal actions were agencies required to unilaterally cancel contracts every time an agency determined to supplement existing NEPA. Nothing

in CEQ or Department NEPA regulations require contract cancellation or rewinding a project to its inception to perform supplemental NEPA analysis. Even within the context of NEPA litigation, courts have not required timber sale contract cancellation during additional NEPA analysis following judicial remand and left contract administration during the additional NEPA analysis to the discretion of the agency. *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Peña (LOWD)*, 2015 U.S. Dist. LEXIS 46279, \*22-23 (D. Or. Apr. 6, 2015). Unlike the situation in *LOWD*, and contrary to the assertion, the court in *Cascadia Wildlands et al. v. BLM*, 6:15-cv-00079-TC (D. Or.) has not adjudicated BLM's NEPA analysis for this Project. BLM volitionally initiated the process to conduct supplemental NEPA analysis here for the purpose of bolstering its NEPA analysis associated with this forest management action and, as a result, this situation presents an even more compelling basis for exercise of the agency's discretion than the situation in *LOWD*. Moreover, these comments offer nothing to suggest injury to the commenters in any way by the BLM's declining to cancel the Second Show timber sale contract while the agency revised its cumulative effects analysis, nor do the commenters assert that the supplemental analysis was wrong or that the public was hindered in its ability to review and comment on the supplemental analysis due to the existing timber sale contracts. Further, BLM has purposefully protected the public's and commenters' interests by maintaining the status quo during the supplemental cumulative effects analysis in that nothing has happened on the ground other than certain limited road renovation work that was already under contract and designed to enhance the condition of pre-existing roads while not giving rise to any meaningful adverse environmental effects or effects that fall within the scope of the revised EA the BLM prepared, nor will any further work be allowed to occur until any administrative protest process on the revised cumulative effects analysis has run its course. We acknowledge the commenters' views on this issue and will continue to administer BLM's NEPA obligations associated with this Project in good faith, but respectfully disagree that contract cancellation is required whenever BLM undertakes supplemental NEPA analysis for existing Projects and contracts. The road work the comment references is part of the ongoing contract administration, and does not create any legal obligations beyond those described in the existing contract. The BLM also notes that commenters *Cascadia Wildlands* and *Oregon Wild* did not oppose the road work in the stipulated stay of the *Cascadia Wildlands* litigation. As discussed above, the BLM has retained its full authority and discretion to take appropriate action depending on the results of the additional analysis and any administrative protest(s), and the road renovation work that has been carried out under the contract does not in any way lessen or undermine that authority.

#### **IMPLEMENTATION**

Implementation for the August 2014 Decision Record began in September 2014 with the purchase of the Second Show Timber Sale by Seneca Sawmill Company. The sale was awarded in December 2014, and road maintenance began in February 2015. Harvesting of sold timber is anticipated to begin in fall 2015.

#### **CONCLUSION**

I have considered and concur with information and the findings in the Final EA, revised cumulative effects analysis, and FONSI in issuing this Decision Record. I have also carefully reviewed the comments on the Final EA and revised cumulative effects analysis and saw no new information in the comments that lead me to believe the analysis, data, or conclusions are in error or that the selected action needs to be altered. Nor would the selected action have effects beyond those already anticipated and addressed in the RMP EIS.

**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 5003, protests of this decision may be made within 15 days of the publication of a notice of decision in a newspaper of general circulation. The notice of decision will be published in the Eugene *Register-Guard* on June 12, 2015. 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

6/9/15  
Date: