

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

**FINDING OF NO SIGNIFICANT IMPACT
Eugene District Aquatic and Riparian Restoration Activities
Environmental Assessment
DOI-BLM-OR-E090-2009-0009-EA**

BACKGROUND

The Bureau of Land Management (BLM) prepared an Environmental Assessment (EA) (DOI-BLM-OR-E050-2009-0009-EA) which analyzed the effects of aquatic and riparian restoration activities to improve aquatic and riparian habitat on BLM-administered lands and non-BLM-administered lands, and prioritization of watersheds where aquatic and restoration activities would be emphasized. The proposed approach would be applied across the Eugene District. The EA analyzed the effects of four different restoration approaches (alternatives), including a No Action Alternative.

FINDING OF NO SIGNIFICANT IMPACT

On the basis of the information contained in the EA (DOI-BLM-OR-E050-2009-0009-EA), and all other information available to me, it is my determination that the implementation of any of the four alternatives is consistent with the objectives, land use allocations and management direction of the 1995 Eugene District Record of Decision/Resource Management Plan (1995 Eugene District RMP), as amended.

The implementation of the proposed restoration activities will not have significant environmental effects beyond those already identified in the 1994 Eugene District Final Environmental Impact Statement/Proposed RMP (1995 Eugene District RMP). The proposed activities do not constitute a major federal action having significant effects on the human environment; therefore an environmental impact statement will not be prepared (40 CFR 1501.4(c)). This finding is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and to the intensity of the impacts described in the EA.

Context

The proposed activities would potentially occur in all land use allocations designated by the 1995 Eugene District RMP, but most actions would occur within Riparian Reserves. The RMP anticipated that aquatic and riparian restoration action would occur to help achieve the objectives of the Aquatic Conservation Strategy. The proposed action is in compliance with the 1995 Eugene District RMP.

The proposed action for Eugene District Aquatic and Riparian Restoration Activities presents an approach for a variety of activities, which would be consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the 1995 Eugene District RMP or 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 (Survey and Manage), as incorporated into the Eugene District Resource Management Plan (2001 ROD), as described below.

In 2002 the Secretaries of Interior and Agriculture entered into a settlement agreement concerning a lawsuit on the 2001 Record of Decision (ROD) for Amendments to the Survey and Management, Protection Buffer, and other Mitigation Measures Standards and Guidelines. The Secretaries issued another ROD in March of 2004. Litigation on the 2004 ROD followed.

In 2006, the District Court for the Western District of Washington (Judge Pechman) 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.”

The BLM and U.S. Forest Service prepared a Supplement to the 2004 EIS and signed Records of Decision in July of 2007. 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 Record of Decision eliminating the Survey and Management mitigation measure. 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.

Following the Court’s December 17, 2009, ruling, the Pechman exemptions are still in place. Nevertheless, the BLM has reviewed the proposed Eugene District Aquatic and Riparian Restoration Activities in consideration of both the December 17, 2009, and October 11, 2006, order. Because the proposed Eugene District Aquatic and Riparian Restoration Activities entails 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); 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; and riparian vegetation treatments that would only constitute thinning in stands less than 80 years old, I have made the determination that these projects meet Exemptions A, B, and C of the Pechman Exemptions (October 11, 2006, Order), and therefore would still be able to proceed to implementation 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.

Some boulder and gravel placement, bridge projects, riparian area invasive plant treatment, and road treatments may not be explicitly provided for in the Pechman exemptions. These activities would be implemented consistent with the 2001 ROD.

These activities may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because the proposed restoration activities not explicitly provided for in the Pechman exemptions would be implemented to meet the provisions of the last valid Record of Decision, specifically the 2001 ROD (not including subsequent Annual Species Reviews). Many of these activities would not be subject to pre-disturbance surveys and/or management of known sites as directed in the 2001 ROD. For any of those proposed activities that are not explicitly provided for in the Pechman exemptions and are subject to pre-disturbance surveys and management of known sites, pre-disturbance surveys would be implemented and management of known sites provided, as appropriate.

The EA detailed that several restoration actions would result in some short-term adverse effects, but would provide long-term improvements in aquatic and riparian conditions, as anticipated in the 1995 Eugene District RMP. For example, culvert replacement would result in short-term sedimentation to streams but would provide passage to fish and improve access to spawning habitat (EA, pp. 42-47; 72-75).

Intensity

I have considered the potential intensity of the impacts that would result from the proposed action relative to each of

the ten areas suggested for consideration by the CEQ (40 CFR 1508.27 (b)).

1. Impacts that may be both beneficial and adverse. Both beneficial and adverse impacts have been considered in the EA. For example, the environmental consequences section for the Aquatic Conservation Strategy includes a discussion about short-term (adverse) impacts and long-term (beneficial) impacts (EA pp. 72-75).

2. The degree to which the proposed action affects public health and safety. No aspect of the Proposed Action would have an effect on public health and safety.

3. Unique characteristics of the geographic area such as proximity of historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. There are no known historic or cultural resource sites that would be affected by the proposed restoration activities. Under the proposed restoration approach, any pre-project cultural resource surveys that would be required would be implemented prior to on-the-ground actions. There are no parks, prime farmlands, or designated wild and scenic rivers in the planning area. The proposed restoration actions may occur within river segments that are eligible or suitable for inclusion in the National Wild and Scenic River System, and the proposed restoration actions would be consistent with the interim protective management for potential segments as described in the Eugene District RMP (see Eugene District RMP, p. 78). Any wetlands within project areas would be protected according to provisions in the Aquatic Conservation Strategy described in the 1995 Eugene District RMP. None of the actions contemplated under the Proposed Action would affect the unique resources in the Eugene District.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial. The effects of the proposed restoration actions are similar to numerous previous restoration projects that have been implemented on the district (EA, pp. 9-13). No unique or appreciable scientific controversy has been identified.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. The analysis has not shown that there would be any unique or unknown risks to the human environment. Aquatic and riparian restoration actions have been pursued and accomplished for many years in the vegetation types typical of the planning area (EA, pp. 9-13).

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. This project neither establishes a precedent nor represents a decision in principle about future actions. The proposed restoration actions are consistent with actions appropriate for the matrix, adaptive management areas, late-successional reserve and riparian reserve land use allocations, as designated by the RMP.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. The environmental analysis did not reveal any cumulative effects beyond those already analyzed in the 1994 Final EIS (EA, pp. 39-76).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources. There are no features within the planning area that are listed or eligible for listing in the National Register of Historic Places, and no designated significant scientific, cultural, or historic resources would be affected by the proposed restoration actions.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. The proposed restoration activities are consistent with actions identified in the National Marine Fisheries Service "Fish Habitat Consultation for Fish Habitat Restoration Activities in Oregon and Washington Biological Opinion" (2008/03506) (ARBO), and with the U.S. Fish & Wildlife Service "Biological Opinion and Letter of Concurrence for Programmatic Aquatic Restoration Activities in Oregon and Washington that Affect ESA-listed Fish, Wildlife, and Plant Species and their Critical Habitats" (8330.F0055(07)). The EA concluded that the proposed action would not negatively impact any northern spotted owl dispersal, suitable, or critical habitat at the stand scale, affect owl use of project areas, or cause take (EA, pp. 57-59). The EA concluded that the proposed action would not negatively impact any marbled murrelet suitable or critical habitat at the stand scale, affect murrelet use of project areas, or cause take (EA, pp. 58-59). The National Marine Fisheries Service ARBO (pages 78-112) concluded that aquatic and riparian restoration activities would have both long-term beneficial effects and minor, short-term, adverse effects to listed fish species, such as increased turbidity.

The National Marine Fisheries Service also concluded in the ARBO (pages 114-115) that the proposed actions are not likely to jeopardize the continued existence of listed fish species, nor would they destroy or adversely modify designated critical habitat.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. The Proposed Action does not threaten to violate any Federal, State, local law or requirement imposed for the protection of the environment. The Proposed Action is consistent with the 1995 Eugene RMP, which provides direction for the protection of the environment on public lands.

/s/ Virginia Grilley
Virginia Grilley
District Manager
Eugene District

07/26/2010
Date