Decision Record
Middle Cow Creek Instream Restoration Project
As Analyzed under the Aquatic and Riparian Habitat Enhancement Environmental Assessment
(DOI-BLM-OR-MO00-2009-0004-EA)

United States Department of the Interior
Bureau of Land Management
Medford District, Glendale Resource Area

I. INTRODUCTION and BACKGROUND

The purpose of the Middle Cow Creek Instream Restoration Project is to improve fish passage within nine creeks by restoring a more natural channel gradient by adding instream structures (logs) in all creeks listed below. Logs from adjacent riparian area or off-site would be used for instream large wood. Logs would be placed instream through cable yarding systems. The in-water work period would be from July 1- September 15.

The Middle Cow Creek Instream Restoration Project Area is located within the Glendale Resource Area in the following locations:

Location/Legal Description:
T32S, R4W, Section 21 (Fizzleout Creek, Boulder Creek and portion of Hogum Creek)
T32S, R4W, Section 28 (Hogum Creek)
T32S, R4W, Section 29 (Jones and Starvout Creek)
T32S, R5W, Section 35 (Quines Creek)
T33S, R5W, Section 2 (Tennessee Gulch)
T32S, R4W, Section 9 (Whitehorse Creek)
T32S, R4W, Section 10 (Whitehorse Creek)
T32S, R4W, Section 15 (and Blackhorse Creek).

II. DECISION and RATIONALE

A. Alternative 1

I am rejecting Alternative 1 of the EA, the No Action Alternative, because it does not meet the stated purpose and need of the project, which is to expeditiously implement projects that maintain or restore aquatic ecosystems (EA, p. 2). While restoration actions are on-going, the Medford BLM has identified a need to increase the number and distribution of projects throughout the District and on adjacent private lands. The absence of a streamlined planning approach that satisfies NEPA requirements will substantially limit the agency's ability to leverage funding opportunities and develop timely partnerships. The increased costs of completing separate NEPA analyses for individual projects would further limit the Medford BLM's ability to respond to watershed and aquatic health needs.

B. Alternative 2

Based on my consideration of the purpose and need for this project and the decision factors identified
in the EA (p. 2), it is my decision to select Alternative 2 as described in the EA (pp. 4-9). This
decision includes actions categorized into instream habitat as outlined below. The decision also
incorporates the project design features described in the EA (pp. 10, 11). The project design features
will provide sufficient measures to avoid or mitigate potential short and long term environmental
effects that might stem from project implementation.

**Instream Habitat Enhancement** (EA, p. 6-8) projects aim to improve aquatic habitat through
increased instream complexity and accessibility.

**Instream Structure** - Actions include placement of log structures to create instream and off
channel habitat that would benefit fish and other aquatic fauna within Fizzleout Creek, Boulder Creek,
Hogum Creek, Jones, Starvout Creek, Quines Creek, Tennessee Gulch, Whitehorse Creek, and
Blackhorse Creek. Logs will be placed instream through cable yarding systems, felling trees from adjacent
riparian areas, and/or with heavy equipment. Consistent with USFWS guidelines, the action would remove
single trees or groups (<5) adjacent to existing openings such as roads, young stands, and clear cuts. Trees
would be felled directly into streams.

**Rationale**
Surveys found approximately 70% of stream channels throughout the Medford District and adjacent
lands lack adequate structure and large wood, resulting in undesirable habitat conditions; restricted fish
passage was found on approximately 60% of streams. Instream structure placement will improve
aquatic habitat conditions through increased complexity leading to pool formation, spawning gravel
retention and velocity refugia.

**III. FINDING OF NO SIGNIFICANT IMPACT (FONSI)**
The FONSI was issued on June 9, 2009 and concluded that on the basis of the information contained in the
environmental assessment and after consideration of the comments received from the public, Alternative 2
in the EA will not result in significant impacts to the quality of the human environment. Thus, the Aquatic
and Riparian Habitat Enhancement EA does not constitute a major federal action having a significant effect
on the human environment and therefore an environmental impact statement (EIS) is not necessary and will
not be prepared. I have found that Middle Cow Creek Instream Restoration Project Project is within the
effects identified in the June 9 FONSI.

**IV. BLM STRATEGIC PLAN**
This project will promote a number of goals in BLM's Strategic Plan for FY2007 to FY2012

*Resource Protection* - Goals 1 & 2: Improve Health of Watersheds and Landscapes; Sustain Biological
Communities. The project will enhance and protect aquatic habitat through restoration of riparian
stands, increasing aquatic complexity and connectivity. These actions will benefit Threatened,
Endangered, and Sensitive species.

**V. CONSULTATION AND COORDINATION**
Pursuant with the Endangered Species Act, BLM consulted on all actions authorized by this decision
with the US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).
Namely, all proposed projects would be consistent with actions identified by NMFS (Fisheries BO
2008/03506) and the USFWS (Wildlife BO #13420-2007-F-0055, LOC #13420-2008-1-0045 and
VI. PUBLIC INVOLVEMENT

The BLM extended an invitation to the local and regional communities, state and federal agencies, private organizations and individuals to develop issues and concerns. Public scoping for the Medford District Aquatic Enhancement Environmental Assessment was initiated in June 2008, when BLM mailed scoping letters to landowners and others who have asked to be kept informed about upcoming BLM projects.

BLM initiated a 21 day public comment period for review of the Aquatic and Riparian Habitat Enhancement EA on 4-15-09. BLM received one comment. The comment questioned why water quantity was not quantified and assessed for streams within the Medford BLM. The comment also questioned the usefulness of a programmatic approach.

The EA acknowledges that water quantity is a limiting factor affecting fish habitat. However, the EA did not propose any activities that would affect duration or magnitude of instream flow. Therefore data and studies related to water quantity and flow regime would not provide the decision maker with information helpful for making a reasoned choice among alternatives. Accordingly, such information was not included in the EAs environmental analysis.

A revised EA was completed on June 2 and added to the BLM website. The revision changed the no cut thinning buffers from a specific distance to a variable one that would be determined by site specific data. A second revision stated that Key watersheds will not be entered unless a watershed analysis has been completed.

BLM developed the programmatic EA to assess projects that have predictable, similar effects regardless of location on the landscape. By analyzing the effects in a single programmatic EA, planning efforts can be greatly reduced; multiple EAs analyzing similar actions and effects would not be necessary. As a result, the programmatic approach facilitates implementation of a greater number and distribution of activities across the landscape at a reduced cost to the tax payer. Similarly, the programmatic approach, through reducing planning timelines and delays, provides greater opportunities to leverage partnerships and funding.

VII. CONCLUSION

A. Plan Consistency

A Determination of National Environmental Policy Act Adequacy (DNA) analysis was documented for the Middle Cow Creek Instream Restoration Project Project. The DNA concluded that this project conforms to the applicable land use plan and that NEPA documentation fully covers the project. Based on the information in the Revised Aquatic and Riparian Habitat Enhancement EA and from the letters and comments received from the public about the project, I conclude that the decisions in this Decision Record are consistent with the following documents:
The Middle Cow 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 Medford 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 Middle Cow Creek Instream Restoration Project in consideration of both the December 17, 2009 and October 11, 2006 order. I have made the determination that the Middle Cow Creek Instream Restoration 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.

Watershed restoration is addressed in the Medford District Record of Decision and Resource Management Plan (USDI, BLM 1995 (ROD/RMP)) as one of the four components of the Northwest Forest Plan’s Aquatic Conservation Strategy (ACS). The primary objective of the ACS is to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands. Proposed actions in the EA are identified in the1995 RMP as actions necessary to restore and maintain ecological
Specifically the 1995RMP/ROD directs: restoring the conditions of riparian stands (RMP/ROD 22, 27); enhance natural populations of fish (RMP/ROD 49-50); increase in-stream habitat, channel stability, complexity and passage (RODIRMP pp. 23,28); Minimize sediment delivery to streams through road drainage improvements, outsloping and closing/stabilizing roads (RMP/ROD pp. 28-29); and restore and maintain water quality to protect designated beneficial uses (RODIRMP p. 41).

VIII. ADMINISTRATIVE REMEDIES

This decision is a forest management decision. Administrative remedies are available to persons who believe they will be adversely affected by this decision. In accordance with the BLM Forest Management Regulations (43 CFR § 5003.2(1)), the decision for this project will not become effective, or be open to formal protest, until the first Decision Notice appears in a newspaper of general circulation in the area where the lands affected by the decision are located.

To protest a forest management decision, a person must submit a written and signed protest to the Glendale Field Manager, 2164 NE Spalding Avenue, Grants Pass, OR 97526 by the close of business (4:30 p.m.) not more than 15 days after publication of the Decision Notice. The protest must clearly and concisely state which portion or element of the decision is being protested and why it is believed to be in error, as well as cite applicable regulations. Faxed or emailed protests will not be considered.

IX. IMPLEMENTATION DATE

If no protest is received by the close of business (4:30 p.m.) within 15 days after publication of the Notice of Decision on March 10, 2010, the decision will become final. If a timely protest is received, the decision will be reconsidered in light of the statement of reasons for the protest and other pertinent information available, and a final decision will be issued in accordance with 43 CFR § 5003.3.

X. CONTACT PERSON

For additional information contact either Katrina Symons, Glendale Field Manager, 2164 NE Spalding Avenue, Grants Pass, OR 97526; telephone 541-471-6653 or Martin Lew, Ecosystem Planner, 541-471-6504.

Katrina Symons
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