

# South Myrtle Creek In-stream Habitat Restoration Decision Document

## Roseburg District Aquatic Restoration Environmental Assessment (EA # OR 103-08-09)

South River Field Office, Roseburg District

### **Decision:**

It is my decision to implement the South Myrtle Creek In-stream Habitat Restoration Project. The BLM will place large wood, supplemented by boulders, in two reaches of South Myrtle Creek approximately one mile in combined length in the W $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 11, T. 29 S., T. 3 W., Willamette Meridian (W.M.) and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 15, T. 29 S., R. 3 W., W.M. The work will be accomplished using an excavator operating from streamside access points or within the stream Channel itself. The project is intended to reduce stream down-cutting, particularly in Section 11, and to provide large pool-forming wood that is lacking and has little potential for recruitment from areas adjacent to the stream.

All equipment will be pressure-washed or steam-cleaned prior to mobilization into the project area to minimize the risk of introducing soil from outside the project area that may be contaminated with noxious weed seed or other propagative materials. Any equipment removed during the life of the contract must be re-cleaned before being returned to the project area.

### **Rationale for the Decision:**

In the Myrtle Creek Watershed Analysis and Water Quality Restoration Plan (2002, p. 147), channel down-cutting and the lack of large wood or recruitment potential were identified as limiting habitat factors for salmonids.

Projects of this nature were described under Alternative Two, the Proposed Action, described in the Roseburg District Aquatic Restoration EA (p. 10). Effects would be consistent with those described in the EA (pp. 27-28). Implementation will aid in meeting the objectives of creating deep pools with ample hiding cover and holding gravels for spawning (EA, p. 5). Alternative One, the "No Action" alternative, would not meet these objectives.

### *Oregon Coast coho salmon*

South Myrtle Creek is designated as critical habitat and Essential Fish Habitat for Oregon Coast coho salmon. Potential effects from placement of logs for in-stream habitat are primarily associated with sediment generated by stream bank and stream channel disturbance.

Actions of this nature were programmatically consulted with the National Marine Fisheries Service and are addressed and authorized in *Endangered Species Act – Section 7 Programmatic Consultation Biological and Conference Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Fish Habitat Restoration Activities in Oregon and Washington*, dated April 28, 2007.

Placement of the in-stream structures in South Myrtle Creek will not result in any undue environmental degradation. The project is consistent with Aquatic Conservation Strategy objectives contained in the 1995 ROD/RMP (pp. 20-21), in that it will help: maintain and restore in-stream flows, maintain and restore the natural sediment regime, and maintain and restore aquatic habitat. The project also implements management direction to restore stream channel complexity (1995 ROD/RMP, p. 20).

### *Wildlife*

There is suitable nesting, roosting and foraging habitat for the **northern spotted owl** (*Strix occidentalis caurina*) present within 65 yards of portions of the stream reaches to be treated. With the application of seasonal restrictions through July 15, during the critical nesting period, no disruption to northern spotted owls that may be present in the project area would be expected.

A small number of trees less than ten (10) inches diameter breast height would be removed to accommodate excavator operations at the locations of the in-stream structures. This would not constitute measurable effect to existing habitat conditions or affect the ability of home ranges for the northern spotted overlapping the project area to continue to support northern spotted owl pairs.

The project area is not located within critical habitat designated for the northern spotted owl in 2008, but is located in the proposed 2012 critical habitat designation. If the area is designated as critical habitat, the incidental removal of trees described above would not preclude the stands from functioning as critical habitat now, or in the future.

The project area is outside the range of the **marbled murrelet** (*Brachyramphus marmoratus*), and the species would be unaffected by the project.

The **foothill yellow-legged frog** (*Rana boylei*) is a Bureau sensitive species that inhabits streams with a complex system of pebbles, cobbles, and boulder components, riffles, and shallow water. Breeding sites are typical found at the confluence of tributaries. Habitat of this nature is present in the project area, and is abundant across the landscape. In-stream disturbance, associated with the project may affect individuals of the species, but would not affect survival of the species, nor contribute to a need to list under the Endangered Species Act.

Two Survey and Manage mollusk species, also designated as Bureau Sensitive that may be present within the project area are the **Oregon shoulderband snail** (*Helminthoglypta hertleini*), and **Chace sideband snail** (*Monadenia chaceana*).

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.) (Judge Coughenour), 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.

In 2006, the District Court (Judge Pechman) had invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the ruling, parties to the litigation entered into a stipulated agreement exempting certain categories of activities from the Survey and Manage standard (hereinafter referred to as "Pechman Exemptions"). In his ruling, Judge Coughenour deferred issuing a remedy and left the Pechman exemptions in effect.

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."

The South Myrtle Creek In-stream Habitat Restoration project meets exemption "c" described above, and no surveys or management of known sites is required.

### *Botany*

Botanical surveys were completed and document that no Threatened and Endangered or Bureau Sensitive species were found in the project area.

### *Cultural/Historical resources*

An inventory of the proposed project area was completed and resulted in the discovery of two cultural resource sites (OR-10-309 and OR-10-310). The location of the sites has been documented (CRS No. SR1202) and will be avoided by the project resulting in no effect to any documented cultural resources. The project will not affect any known sacred, religious, ceremonial or culturally significant Indian sites or National Register properties. The BLM has completed its Section 106 responsibilities under the 2012 National Programmatic Agreement and the 1998 Oregon Protocol.

## **Public Involvement & Response to Comment:**

An interdisciplinary team began analysis for the Roseburg District Aquatic Restoration EA in the autumn of 2008, and the public was notified of initiation of the environmental assessment in the Winter 2008 Roseburg District Quarterly Planning Update.

A thirty-day period for public review and comment was provided upon completion of the environmental assessment (August 4, 2009 through September 3, 2009), consistent with BLM policy/practice to provide the public a review opportunity prior to issuance of any decision(s). Notification was made to state and Federal resource management and regulatory agencies. Local tribal and county government, trade groups and other interested parties were also notified. No comments on the environmental assessment were received.

## **Monitoring:**

Monitoring will be done in accordance with the 1995 ROD/RMP, Appendix I (pp. 84, & 195-198), with emphasis on assessing the effects of the restoration activities on the following resources: Water and Soils; and Fish Habitat.

## **Administrative Remedies:**

### **Effective Date of Decision**

This decision will become effective on the day after the expiration of the appeal period, 30 days after this decision is signed, where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21 (b).

### **Right of Appeal**

Pursuant to 43 CFR § 4.410, this decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.”

If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 PM PDT) not more than 30 days after the latest date of service of this decision upon the proponent and other affected parties. Only signed hard copies of a notice of appeal that are delivered to the Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon will be accepted. Faxed or emailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal.

You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant's success on the merits,
- The likelihood immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within 15 days after filing in order to be in compliance with appeal regulations, 43 CFR § 4.413 (a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410 [c] and 4.413) and specify the date and manner of such service. The Board will review any petition for a stay and may grant or deny the stay. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until the Board makes a final ruling on the case.

*FOR*   
FOR Steven Lydick  
Field Manager  
South River Field Office

6/5/12  
Date

**How to File an Appeal**

See attached Form 1842-1 for complete instructions on filing an appeal.

**Contact Information**

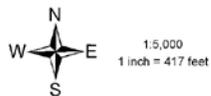
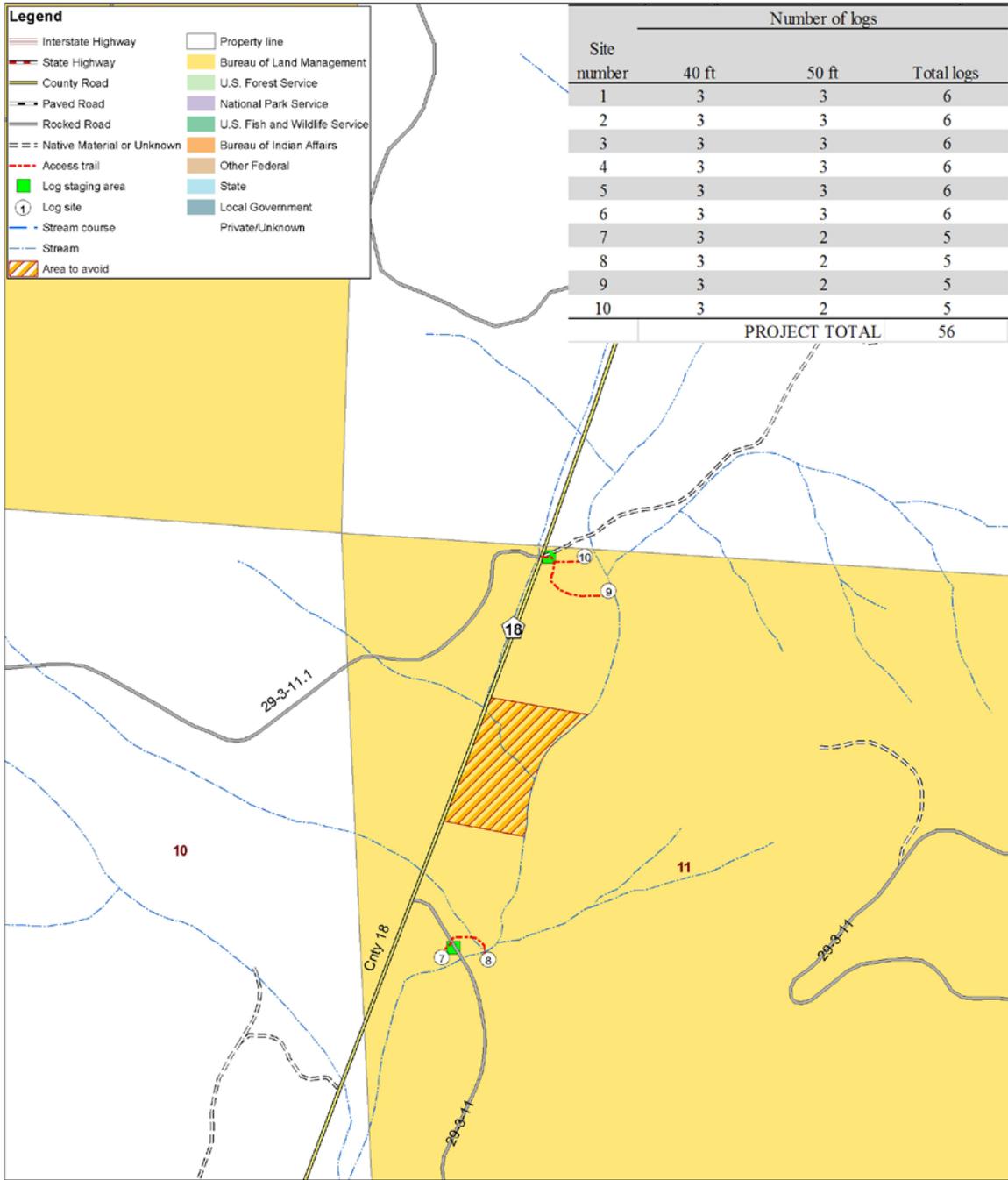
For additional information, contact Steven Lydick, Field Manager, South River Field Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97471, 541-464-3211.

Additional contact addresses include:

U.S. Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy Street, MS 300-QC  
Arlington, VA 22203

U.S. Department of the Interior  
Office of the Regional Solicitor  
805 SW Broadway, Suite 600  
Portland, OR 97205

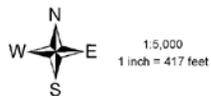
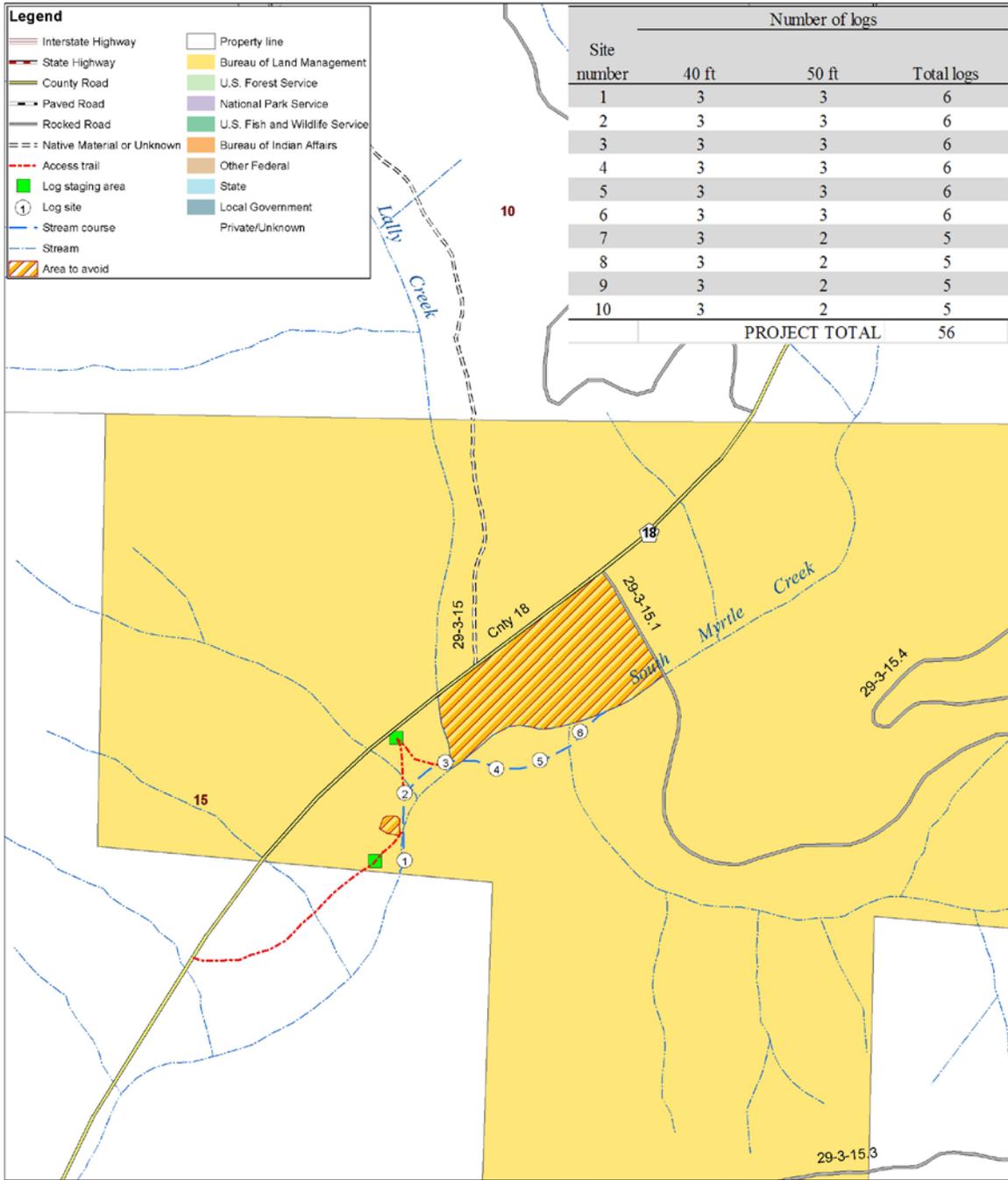
**South Myrtle Creek 2012**  
**T. 29 S., R. 3 W., section 11**



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 777 Garden Valley Blvd.  
 Prineville, Oregon 97671

**South Myrtle Creek 2012  
T. 29 S., R. 3 W., section 15**



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