

# **Upper Days Creek 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 Upper Days Creek Restoration project, recommended for partial funding under Title II of the Secure Rule Schools and Community Self-Determination Act by the Roseburg District Resource Advisory Committee. This project will improve aquatic habitat in the Days Creek-South Umpqua watershed. Eastern portions of the watershed, including the project area, are designated as a Tier 1 Key Watershed by the Roseburg District BLM under the 1995 Roseburg District Resource Management Plan (ROD/RMP, p. 20), to serve as refugia for maintaining and recovering habitat for at-risk stocks of anadromous salmonids and resident fish species.

Subject to available funding, the project will place up to 70 logs and 40 boulders in a reach of Days Creek located on lands administered by the BLM in Section 33, T. 29 S., R. 3 W., Willamette Meridian. The project is intended to create cover and complex pool habitat for rearing juvenile Oregon Coast coho salmon and steelhead trout. Additionally, the structures will collect and retain spawning substrates, and increase streambed height allowing for reconnection with historic side channels that provide off-channel winter habitat for juvenile fish.

The BLM will also block a low-water ford on BLM Road No. 29-3-33.0 where vehicles crossing the stream are causing stream bank and stream channel erosion with a resultant increase in sedimentation and turbidity in Days Creek.

An excavator will be used to place logs and boulders.. Access through riparian areas will be limited to specified locations and in-channel operations will only occur when absolutely necessary or on bedrock channels to minimize damage. Work will be accomplished in the summer of 2015, during the instream work window of July 16<sup>th</sup> through September 15<sup>th</sup>.

The following project design features will be implemented:

- All equipment will be pressure washed or steam cleaned prior to mobilization into and out of 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 will be re-cleaned before being returned to the project area.
- The contractor will have a spill containment kit available in the event of any inadvertent spillage of petroleum products.
- Upon completion of the project excavator trails will be scarified, seeded and mulched.

## **Rationale for the Decision:**

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*

Days Creek is designated as critical habitat and Essential Fish Habitat for Oregon Coast coho salmon. Potential effects from placement of logs for instream 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 *Reinitiation of the Endangered Species Act Section 7 Formal Programmatic Conference and Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Aquatic Restoration Activities in the States of Oregon and Washington* (ARBO II), dated April 25, 2013.

Placement of the instream structures in Days 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).

### *Northern spotted owl*

The project will occur within the range of the northern spotted owl (*Strix occidentalis caurina*). The project area falls within three historic northern spotted owl home ranges, and suitable habitat is present within the project area. Activities associated with the installation of instream structures and blocking of the low-water will be scheduled between July 16<sup>th</sup> and September 15<sup>th</sup> outside of the critical nesting period to avoid potential disruption/disturbance should northern spotted owls be nesting in proximity to the project area.

Approximately eight (8) small trees ten (10) to fifteen (15) inches diameter breast height may be removed to facilitate excavator access and operations for the conduct of the instream work. None of the trees are suitable nest trees, and removal would have no measurable effect on the function of the stand as suitable habitat.

### *Marbled murrelet*

The project area is not located within the established distribution range of the marbled murrelet, (*Brachyramphus marmoratus*) and hence will have no effect on the species from either disturbance/disruption or habitat removal/modification.

## *Bald and golden eagles*

### *Survey and Manage*

In ruling on Conservation Northwest et al. v. Mark E. Rey et al. on December 12, 2009, Judge Coughenour in the U.S. District Court for Western Washington set aside the 2007 Record of Decision (ROD) eliminating the Survey and Manage mitigation measures, but deferred issuing a remedy until further proceedings. Judge Coughenour did not set aside the Pechman exemptions, or enjoin the BLM from proceeding with projects.

The plaintiffs and Federal Agencies entered into settlement negotiations in April 2010, and the Court filed approval of the resulting Settlement Agreement on July 6, 2011. The 2011 Settlement Agreement made four modifications to the 2001 ROD: (A) acknowledged existing exemption categories (2006 Pechman Exemptions); (B) updated the 2001 Survey and Manage species list; (C) established a transition period for application of the species list; and (D) established new exemption categories (2011 Exemptions).

On April 25, 2013, the Ninth Circuit Court of Appeals invalidated portions of the 2011 Settlement Agreement, but the 2006 Pechman Exemptions remain unchanged.

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 projects 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 project meets exemption criteria "c" described above, and no surveys or management of known sites is required.

### *Botany*

The project area was surveyed for threatened and endangered plants, and Bureau Sensitive plants and lichens. None were identified.

### *Cultural/Historical Resources*

Bureau of Land Management personnel conducted cultural resource surveys on February 6, 2013. The BLM has completed its Section 106 responsibilities for this project. A Project Tracking Form (CRS No. SR1307) has been prepared and is on file.

### **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 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:**

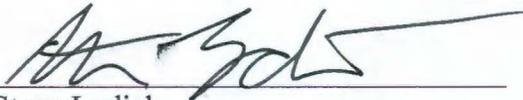
The decision described in this document is a forest management decision and is subject to protest by the public. In accordance with Forest Management Regulations at 43 CFR Subpart 5003 Administrative Remedies, protests of this decision may be filed with the authorized officer, Steve Lydick, within 15 days of the publication of the legal notice of availability of the decision on July 29, 2014, in *The News-Review*, Roseburg, Oregon.

43 CFR § 5003.3 subsection (b) states: "Protests shall be filed with the authorized officer and shall contain a written statement of reasons for protesting the decision." This precludes the acceptance of electronic mail (email) or facsimile (fax) protests. Only written and signed hard copies of protests that are delivered to the Roseburg District Office will be accepted. 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.

43 CFR § 5003.3 subsection (c) states: "Protests received more than 15 days after the publication of the notice of decision or the notice of sale are not timely filed and shall not be considered." Upon timely filing of a protest, the authorized officer shall reconsider the project decision to be implemented in light of the statement of reasons for the protest and other pertinent information available.

The authorized officer shall, at the conclusion of the review, serve the protest decision in writing to the party or parties. Upon denial of protest, the authorized officer may proceed with the implementation of the decision as permitted by regulations at 43 CFR § 5003.3 subsection (f).

If no protest is received by close of business (4:30 P.M., PST) within 15 days after publication of the decision notice, this decision will become final. If a timely protest is received, the project decision will be reconsidered in light of the statement of reasons for the protest and other pertinent information available, and the South River Field Office will issue a protest decision.



Steve Lydick  
Field Manager  
South River Field Office

7/24/2014

Date