

Western Oregon Task Force

Final Report
to the
Secretary of the Interior

July 22, 2010

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Western Oregon Task Force Report

Executive Summary

INTRODUCTION

On July 16, 2009, Secretary of the Interior Ken Salazar announced the withdrawal of the Records of Decision (RODs) for the Salem, Eugene, Roseburg, Coos Bay, Medford, and Klamath Falls Resource Management Plans (RMPs), citing the decision by the Acting Assistant Secretary for Lands and Minerals that the “no effect” determination under the Endangered Species Act (ESA) for the RMPs was legally indefensible based on the record and applicable law. Secretary Salazar asked Bureau of Land Management (BLM) Director Bob Abbey and U.S. Fish and Wildlife Service (FWS) Director Sam Hamilton to establish a special interdisciplinary Task Force to take a fresh look at processes that have guided the management of BLM forests in western Oregon.

The Task Force was instructed to make recommendations to the Secretary on a process for finding a long-term strategy for forest management on Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act) lands. The Task Force was asked to focus on a number of western Oregon forest management components, including:

- The statutory framework for planning, including the O&C Act and the Endangered Species Act (ESA);
- Interagency coordination and collaboration in the context of the planning process;
- The appropriate scope and geographic scale for BLM planning;
- Public outreach and involvement; and
- Use and implementation of science.

In addition to these five areas, the Task Force identified three additional areas of concern that surfaced in the discussions with stakeholders:

- Coquille Tribal Trust Responsibility;
- Northwest Forest Plan; and
- Social and Economic Considerations.

This is the report of the special interdisciplinary Task Force. This report contains conclusions and recommendations based on a number of interviews of individuals and groups who were involved in the Western Oregon Plan Revision (WOPR). The conclusions and recommendations are advisory in nature. Nothing in this report is intended to or should be interpreted to create any binding or mandatory requirements or obligations on the part of the Secretary of the Interior or the BLM. Any interpretations of Court cases or laws belong to the Task Force alone and are not intended to represent the position that the United States has taken or may take in future litigation involving western Oregon timber issues.

BACKGROUND

The Task Force was comprised of 12 Federal employees with backgrounds in several resource disciplines and represented the BLM, FWS, National Marine Fisheries Service (NMFS), and the Forest Service (FS). Over the course of several weeks in December 2009 and January 2010, the Task Force met with more than 80 stakeholders, State and Federal agency representatives, and the Coquille Tribe. The Task Force made numerous observations generated from the discussions.

Though many recognized BLM's efforts in the WOPR process, the Task Force found opinions are polarized. This report reflects what we heard from all parties. For example, viewpoints desiring increased regulation are countered by those wanting less regulation. Even in instances with apparent agreement, there is still debate over the "how," "what," and "when" of the action. For example, forest "management" was an area of common ground, but meant different things to different people.

The O&C Act itself is a cause for polarization and debate. The Federal Land Policy and Management Act of 1976 (FLPMA) requires multiple use on public lands. However, in the event of conflict with or inconsistencies between the O&C Act and FLPMA, the O&C Act prevails (FLPMA, Section (701)(b)). While this report discusses the issues associated with interpretations of the O&C Act, the opinion of the Task Force is that unless and until the O&C Act has decisive clarification, it will continue to foster debate and litigation.

As a result of the information-gathering process, the Team identified issues and developed recommendations for consideration by the Secretary.

Recommendations are made on the following issues:

- Coquille Restoration Act
- Three Components of the Northwest Forest Plan:
 - Aquatic Conservation Strategy
 - Survey and Manage Mitigation Measures
 - Northern Spotted Owl Critical Habitat and Matrix Lands
- Interagency Cooperation and Collaboration:
 - Interagency Vision
 - ESA Consultation
 - Public Outreach and Involvement
- Appropriate Scope and Geographic Scale of Planning:
 - Land Tenure
- Use and Implementation of Science

- Social and Economic Considerations:
 - Three-Year Program of Work
 - State and Federal Cooperation in Development of Long-Term Economic Solutions
- Budget Structure and Performance System

MAJOR ISSUES AND RECOMMENDATIONS

Coquille Restoration Act

The Coquille Restoration Act (P.L. 101-42), as amended by Public Law 104-208 of September 30, 1996, established the 5,410-acre Coquille Forest and states that the Assistant Secretary for Indian Affairs, acting in consultation with the Coquille Tribe, is authorized to initiate development of a forest management plan for the Coquille Forest. The Act requires the Secretary to manage the Forest under “applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the ESA, and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future.”

To satisfy obligations under the Coquille Restoration Act, the Task Force recommends that priority be given to the initiation of a planning process for the Coquille Forest and the proposed Tribal Cooperative Management Area. We recommend that the planning effort would result in an amendment to the 1995 Coos Bay RMP.

Three Components of the Northwest Forest Plan (NWFP)

Much of the BLM lands managed under the NWFP are under a land allocation titled ‘Matrix.’ The Matrix lands comprise 3,975,300 acres, representing 16 percent of the Federal lands within the range of the northern spotted owl. The Matrix is the area in which most timber harvest and other silvicultural activities will be conducted. However, the Matrix does contain non-forested areas as well as forested areas that may be technically unsuited for timber production. It is this mix of uses and the intersection with designated critical habitat for northern spotted owl and salmonid species that is the crux of the debate over management of timber on BLM lands.

The NWFP and the WOPR were two attempts to allocate land to assure high-quality resource conditions and predictable supply of timber and economic activity. Due to a variety of reasons, those objectives have not been fully achieved.

In a highly litigious atmosphere under the NWFP, the agencies have been managing controversy by designing timber projects (primarily thinning and fuels reduction projects) that can expeditiously proceed through the ESA Section 7 consultation process. For example, the proposed BLM 2010 Program of Work identifies 90 percent of the proposed volume to be generated from thinning projects. This opportunistic and risk-avoidance approach results in not implementing projects in areas where they are needed to achieve the full suite of landscape

objectives. This approach to forest management cannot continue indefinitely. Some Districts have predicted they will run out of thinning projects and harvest volume in a few years.

Three components frequently litigated are: 1) the Aquatic Conservation Strategy (ACS); 2) Survey and Manage Mitigation Measures; 3) and conflicts between designated northern spotted owl critical habitat and Matrix lands. If there is an expectation to provide jobs and income from forest management activities on O&C lands, then resolution to the implementation issues of these three elements needs to occur.

Aquatic Conservation Strategy: The Task Force recommends the agencies review, update where necessary, and affirm consultation tools and procedures that were put into place to address deficiencies identified by the Courts in the Pacific Coast Federation of Fisheries Association v. National Marine Fisheries Service litigation (i.e., ACS consistency, four scales of spatial analysis, and analysis of jeopardy). Failure to resolve these issues could result in continued Court decisions invalidating biological opinions.

Survey and Manage Mitigation Measures: Following a December 2009 decision by the District Court of Washington granting plaintiffs motion for partial summary judgment based on NEPA violations, the BLM and FS decided to respond to settlement communications from plaintiffs. The NWFP requires BLM and FS manage for a comprehensive suite of non-ESA listed species. The list is more expansive than the species that would be managed under the agencies' Special Status Species policies. This will likely place a significant cost and administrative burden on the land-management agencies for completing surveys and providing habitat protection prior to engaging in ground-disturbing actions.

In the short term, the Task Force recommends BLM concentrate on projects in areas with a low probability of occurrence of Survey and Manage species (i.e., Pechman exemption including thinning projects in stands 80 years and younger).

The Task Force also recommends an Interagency Science Team reexamine the requirements for the conservation of old-growth dependent species, review the Survey and Manage list, and recommend revision as appropriate.

Northern Spotted Owl Critical Habitat and Matrix Lands: In 1992, the northern spotted owl critical habitat was designated (prior to the NWFP). In 1994 when the NWFP was adopted, a percentage of the NWFP's Matrix land-use allocation (i.e., lands intended for harvest) was placed on areas designated as critical habitat. This has created a conflict during timber sale project-level consultation. In 2008, the FWS revised critical habitat; however, that redesignation has been challenged in the Courts along with the recovery plan. The FWS is proposing to revise the recovery plan and based on that revision, the Fish and Wildlife Service will consider whether to revise critical habitat. Once those actions are completed, the Federal agencies need to work together to align management actions with critical habitat.

In the short term, the Task Force recommends that we defer harvests in mature forests where there is the potential overlay with northern spotted owl critical habitat designations (both the

1992 and 2008) until the recovery plan is revised and, if appropriate, critical habitat is redesignated.

The Task Force recommends the FWS revise the recovery plan and, if appropriate, the critical habitat designation as soon as possible so that the agencies can work together to align management actions.

Interagency Cooperation and Collaboration

During discussions with stakeholders, agency staff, and the Coquille Tribe, the Task Force heard many times that the WOPR process was very informative but not truly collaborative. Consequently, the perceived lack of collaboration reduced opportunities to build broad-based support for the process and establish trust between the stakeholders. For future efforts to be successful, collaboration must be integral at all phases of planning and implementation.

Numerous collaborative forums already exist and should be engaged as appropriate, such as the Governor's Federal Forest Advisory Committee, Sustainable Rural Schools Act Resource Advisory Councils, Provincial Advisory Committees, and the Landscape Conservation Cooperative to help to develop an overarching vision for forest management in the Northwest.

Interagency Vision: The Task Force recommends the establishment of an Interagency Executive Steering Committee chartered by the Secretaries of the Interior, Agriculture, and Commerce to establish a common vision for the management of the NW forests and requirements of all government agencies in the regulation and management of the federal lands in the Pacific Northwest.

The Interagency Executive Steering Committee should address the implementation of the Endangered Species Act, Clean Water Act, FLPMA, NWFP, O&C Act etc, thus allowing a common government vision for the management of the federal forests in the Pacific Northwest.

ESA Consultation: Consultation at the plan level in the Pacific Northwest remains problematic due to a lack of specificity in RMPs that would enable the NMFS and FWS to write a legally defensible biological opinion. Absent a new, innovative approach to consultation at the plan level, the Task Force finds the current lack of specificity in land use plans precludes the Services from writing a legally defensible biological opinion.

The Task Force recommends an interdepartmental SOL/DOJ/OGC/NMFS attorney group work together to propose a consultation process under the ESA which addresses a means to evaluate the conservation contribution of land use plans. The result would be a revision, update, or replacement of the 2000 Memorandum of Agreement among FWS, NMFS, FS, and BLM.

To the extent that consultation under ESA Section 7(a)(2) continues to be required at the plan level, such consultation could be successfully completed either by : 1) proposing a multi-year program of work with sufficient specificity to define the potential level of adverse effect (i.e.,

amount of incidental take); or 2) by identifying sufficient side-boards that provide the NMFS and FWS reasonable certainty that adverse effects will be minimized.

The Task Force recommends that the senior managers of the action and regulatory agencies review existing consultation procedures and the effectiveness of the Streamlined Consultation approach, and recommend improvements as appropriate. The senior managers should closely examine the added value of co-locating more NMFS and FWS personnel in BLM offices to facilitate project-level design and consultation.

Public Outreach and Involvement: The Task Force recommends the Interagency Executive Steering Committee establish a collaborative process with stakeholders throughout western Oregon to develop overarching principles for management of Federal forests. At some point near the culmination of this process, it may be desirable to provide a forum for the Secretaries to announce the successful development of the overarching principles that would be used in future land use planning efforts.

Appropriate Scope and Geographic Scale for Planning

With the withdrawal of the WOPR RODs, the BLM returned to managing under the 1995 RMPs. In the 15 years since the 1995 RMPs were completed there have been advances in science and technology, additional data has been acquired, additional issues have developed (such as climate change), and the establishment of the Coquille Forest (September 30, 1996).

The RMPs must address issues that occur at a variety of scales; for example, recovery plans and aquatic conservation strategies are landscape level and lend themselves to broader analysis. There are also geographic differences that lend themselves to smaller-scale analysis.

The Task Force recommends future planning efforts use the overarching principles developed through the regional collaborative process outlined by the Interagency Executive Steering Committee above. Each RMP/EIS effort would result in a Purpose and Need statement that is responsive to local issues as identified through a collaborative effort.

To address the issues of scale and to more fully facilitate local participation and collaboration in the planning process, the Task Force recommends that each District (or combination of Districts with common planning issues) initiate a stand-alone RMP revision/EIS process. Given budget constraints, it is likely that not all plans will be initiated at the same time.

The Task Force recommends that new plan evaluations be completed on the existing plans to determine priority for revisions and whether there are common issues that would indicate an opportunity to combine District planning and EIS efforts.

Land Tenure: The BLM-administered O&C lands are embedded in a checkerboard pattern of landownership throughout western Oregon and only comprise 11 percent of the land base in western Oregon. The pattern of land ownership in the O&C Act area creates a wide range of challenges associated with managing for healthy forestlands, habitat conservation and restoration, species conservation and recovery, timber management, access, watershed

protection, recreation, and aesthetics. As a result of private land practices (timber harvest, agricultural, residential, etc.), species conservation is even more dependent on Federal lands in the checkerboard.

Notwithstanding the above, there is important habitat on non-BLM lands in the checkerboard that would be essential to meet watershed and species conservation needs; and, therefore, may be desirable to bring into public ownership through acquisition or exchange.

The Task Force recommends that a Land Tenure Team be established to conduct a comprehensive review and identify opportunities to adjust landownership patterns to meet species conservation and other resource management objectives in western Oregon. The land use planning process would be used to identify BLM lands that would facilitate land ownership adjustment.

Use and Implementation of Science

A considerable amount of time, energy, and funding was spent in the development of the science used in the WOPR process.

The Task Force recommends that the science work (including base data, modeling protocols, and assumptions) be independently reviewed by an Interagency Science Team. Work that is determined to be complete, appropriate, and applicable to support management strategies should be used in future planning efforts.

Social and Economic Considerations

Since the mid-1990s and the development of the Northwest Forest Plan, timber production has steadily declined in western Oregon which has caused economic hardship in many communities. Some communities have been more resilient than others and have had opportunities to further diversify their economies, but many still rely to a great degree on timber production. Highly dependent communities have been facing a loss of forest-industry infrastructure and without a sustainable, predictable supply of timber, this is likely to continue. Additionally, the loss of timber revenues has had a big impact on the 18 O&C counties, some of which are highly dependent on these revenues to fund basic services. County payments under The Secure Rural Schools (SRS) Act were designed to supplement revenue from loss of timber sales but these payments are declining and will be phased out entirely in 2012. In light of these significant concerns, development of long-term planning guidance for the O&C lands will be an essential element to address the social and economic issues in western Oregon.

The Governor's Federal Forests Advisory Committee's final report (January 2009), *Achieving Oregon's Vision for Federal Forestlands*, addresses a number of issues faced by Federal land managers in western Oregon – environmental, social, economic, and process – and offers a range of actions that could be taken at the local, state, and Federal levels to address these issues.

Additionally, the Governor's Task Force on Federal Forest Payments and County Services issued its *Final Report* in January 2009, with options for addressing the decline in timber receipts from

all Federal forest lands in Oregon. The report contains a number of recommendations aimed at local, State, and Federal levels, recognizing that the issue is complex and needs involvement at all levels in order to diversify Oregon's tax base as well as diversify forestland management practices to make them more sustainable.

Three-Year Program of Work: For the short term, given diminishing opportunities for thinning projects on O&C lands coupled with the considerable uncertainty in the BLM forest management program, the Task Force recommends BLM and the Forest Service jointly develop a 3-year program of work, updated annually and coordinated with the regulatory agencies. This will support the Secretary's commitment to provide forest industry jobs across western Oregon and bridge the gap until completion of new land use plans. To facilitate this joint program of work, the agencies should explore options for sharing staff and resources to optimize their ability to both restore forest landscapes and support rural communities.

State and Federal Cooperation in Development of Economic Solutions: The Task Force recommends that BLM partner with a State organization (such as the Oregon Economic Development Association) to use the information developed by the Governor's Task Force to assess opportunities for economic diversification in O&C counties, and how resources from BLM's O&C lands could contribute to those diversification efforts as well as local revenues.

Budget Structure and Performance System

The current budget and performance system, which emphasizes timber harvest and associated targets, is compelling managers to attempt to meet a performance measure that is impacted by circumstances beyond their control (litigation, market conditions, ESA consultations, etc.).

The Task Force recommends BLM explore redirecting the current budget and performance focus away from timber targets and toward forest health and restoration. Treating acres may allow for a greater variety of forest goods and ecosystem services to be recognized.

Western Oregon Task Force Report

INTRODUCTION

On December 30, 2008, C. Stephen Allred, the Assistant Secretary for Land and Minerals Management in the Department of the Interior, signed the RODs for the Salem, Eugene, Roseburg, Coos Bay, Medford, and Klamath Falls RMPs.

Several legal complaints were filed against the approved plans; and on July 16, 2009, Secretary of the Interior Ken Salazar announced the withdrawal of the RODs for the Salem, Eugene, Roseburg, Coos Bay, Medford, and Klamath Falls RMPs. The Secretary cited the decision by the Acting Assistant Secretary for Lands and Minerals that the “no effect” determination under the Endangered Species Act for the RMPs was legally indefensible based on the record and applicable law.

Secretary Salazar subsequently directed the BLM, in coordination with the FWS, to identify ecologically sound timber sales under the NWFP that could get wood to the mills in Fiscal Year 2010. With the withdrawal of the WOPR, BLM forests in western Oregon are again managed under the NWFP, which guided BLM timber sales from 1994 until December 2008.

Secretary Salazar asked BLM Director Bob Abbey and FWS Director Sam Hamilton to establish a special interdisciplinary Task Force to take a fresh look at processes that have guided the management of BLM forests in western Oregon. The Task Force was comprised of 12 Federal employees with backgrounds in several resource disciplines and represented the BLM, FWS, NMFS, and the FS. The Task Force was instructed to make recommendations to the Secretary on a process for finding a long-term strategy for forest management on O&C lands and was asked to focus on a number of western Oregon forest management components, including:

- The statutory framework for planning, including the FLPMA, O&C Act, and the ESA;
- Interagency coordination and collaboration in the context of the planning process;
- The appropriate scope and geographic scale for BLM planning;
- Public outreach and involvement; and
- Use and implementation of science.

Over the course of several weeks in December 2009 and January 2010, the Task Force met with over 80 stakeholders, State and Federal agency representatives, and the Coquille Tribe. The Task Force made numerous observations and findings from the discussions with these individuals and groups which illuminated specific issues affecting forest management of the O&C lands. In addition to the Secretary’s five areas of focus, the Task Force identified three additional areas of interest:

- Coquille Restoration Act;
- Northwest Forest Plan; and
- Social and Economic Considerations.

These areas of interest generated a variety of issues that were subsequently reviewed and are the basis for the Task Force recommendations. Several of the issues and subsequent recommendations in the body of this report are cross-cutting with the eight areas of focus.

Recent Case History of the O&C Act

The O&C Act has guided the management of the O&C lands for 70 years. The BLM has viewed its primary role as providing timber for the local economy and receipts to O&C counties as authorized by the O&C Act. The forest products industry and counties dependent on O&C receipts generally believe that timber production is the dominant use of O&C lands. They point to the Ninth Circuit Court decision in 1990 in the *Headwaters v. BLM* case as affirmation of this interpretation. However, other people believe the Secretary of the Interior has much more discretion in implementing the O&C Act and point to Judge Dwyer's decision in *Seattle Audubon Society v. Lyons* affirming the Northwest Forest Plan and the Federal Government's defense in that case. People generally agree the O&C Act is subject to other laws, such as the ESA and the Clean Water Act, but those adhering to the view that timber is the dominant use feel only the minimum necessary to protect species and water is required. Others interpret the O&C Act to give the agency discretion to establish reserves and limit timber production.

The American Forest Resource Council (AFRC) Court case *AFRC v. Caswell* settlement agreement (August 2003) included a provision that at least one alternative to be considered in each proposed revision to the 1995 Western Oregon RMPs be an alternative which will not create any reserves on O&C lands except as required to avoid jeopardy under the ESA. The agreement included a December 31, 2008 deadline for completion and a provision that all plan revisions be consistent with the O&C Act as interpreted by the Ninth Circuit Court of Appeals. The opinion of the Task Force is unless and until the O&C Act has decisive clarification, it will continue to foster debate and litigation.

BACKGROUND

The Task Force invested a substantial amount of time seeking to understand the social, economic, and environmental issues intersecting with the planning efforts of both the BLM and the FS. The forest management efforts of both Federal agencies are interrelated because of the proximity of the lands they manage to one another, their interests in forest health and timber production, the dependence of some communities on forest management for their vitality, and, of course, the NWFP. Since forest management for BLM O&C lands has reverted to the NWFP and the 1995 RMPs, it is important to understand this plan as it explains a number of reasons why the BLM moved forward with a new plan revision process.

1994 Northwest Forest Plan

The purpose of the NWFP was to develop a management strategy to protect late-successional and old-growth, forest-related species and produce a sustainable timber harvest. A series of late-successional forest reserves (45 in total) were established for protection of northern spotted owl habitat and to provide habitat for other late successional and old-growth related species, as well as buffers around riparian areas to protect aquatic species. The late successional reserve system

was designed to reduce habitat fragmentation over time and consisted of significant stands of existing old-growth forest and younger stands to be managed to create late-successional forest conditions. Ten adaptive management areas were designated to encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and other social objectives. In addition, the NWFP area included over 7 million acres of Congressionally Reserved Areas. Most of the remaining Federal land was designated “Matrix” where more traditional timber harvesting, including regeneration harvests, would be allowed. The Matrix included pockets of old-growth forest, some of which had been designated as northern spotted owl critical habitat in 1992. Issuance of “no adverse modification of critical habitat” biological opinions on the effects to owls from timber harvests by the FWS in these overlap areas became difficult. Lawsuits on these timber sale project-level biological opinions from environmental groups were numerous. The NWFP itself was challenged in Court by the environmental community and the forest products industry, each with very different reasons. In 1994, Judge William Dwyer upheld the NWFP against all challenges.

The regulatory framework for the NWFP was based on the FS’s 1982 planning regulations issued pursuant to the National Forest Management Act of 1976 (NFMA) and the Multiple-Use Sustained Yield Act of 1960. A uniform approach was applied to all Federal lands, including BLM, within the planning area to provide more consistent management. As such, the NWFP was developed consistent with the “viability standard” of the FS’s planning regulations (36 CFR Ch.II 7-1-91 Edition 219.19 (1982)), which reads “Viable populations of all native, and desirable non-native vertebrates, will be maintained, well distributed within the planning area.” Timber production was one of several desired outcomes of the NWFP, and an expected level of timber output was established.

BLM Planning

Prior to the NWFP, the BLM District Offices had begun revising their old Management Framework Plans, issuing a draft RMP, and a draft EIS in 1992. This planning process was put on hold pending completion of the NWFP in 1993. In 1994, the ROD for the NWFP amended the old MFPs (the plans in effect at that time), and the final EIS for the NWFP was used to supplement BLM’s 1992 draft EIS. In 1994 through 1995, BLM issued its final EIS and RMPs, which incorporated the management direction from the 1994 NWFP ROD and its standards and guidelines.

BLM’s WOPR

The BLM had completed a plan evaluation in 2004 (per BLM planning policy) and confirmed that the NWFP was not being implemented consistent with the ROD. In addition, in August 2003 the Department of Justice, on behalf of the BLM, entered into a settlement agreement with the AFRC, et al., which included a stipulation, contingent on obtaining the necessary funds, to revise the RMPs for its Coos Bay, Eugene, Lakeview, Medford, Roseburg, and Salem Districts by December 31, 2008. The stipulation further required that:

- At least one alternative to be considered in each proposed revision will be an alternative which will not create any reserves on O&C lands except as required to avoid jeopardy under the ESA.
- All plan revisions shall be consistent with the O&C Act as interpreted by the Ninth Circuit Court of Appeals.

Over a 6-year period beginning in 2004, BLM spent over \$18.5 million to prepare the WOPR. The plan was prepared consistent with the O&C Act as interpreted by the Ninth Circuit Court of Appeals. The Purpose and Need for the WOPR was focused on specific legal requirements and intended benefits of the BLM's unique mandate under the O&C Act.

The "Notice of Intent" to prepare the Resource Management Plan Revisions and an associated Environmental Impact Statement for Six Western Oregon Districts," commonly known as the WOPR, was published in the Federal Register on September 7, 2005. The Analysis of the Management Situation was published in October 2005. The Proposed Planning Criteria and State Director Guidance was published in February 2006. The draft EIS was published in August 2007, followed by a 5-month public comment period. The final EIS was published in October 2008. During the 30-day protest period initiated via Federal Register on November 7, 2008, 264 protest letters were filed. The BLM denied all protests, save one, resulting in a minor boundary adjustment to a proposed area of critical environmental concern in the Salem District.

Social and Economic Considerations

Western Oregon is facing significant social and economic issues. Since the mid-1990s and the development of the NWFP, timber production has steadily declined in western Oregon which has caused loss of jobs and economic hardship in many communities. Timber-related job losses have resulted from both the decline in timber production on Federal lands and technological changes in the forest industry. Some communities have been more resilient than others and have had opportunities to further diversify their economies, but many still rely to a great degree on timber production.

Highly dependent communities have been facing a loss of forest-industry infrastructure and without a sustainable, predictable supply of timber, this is likely to continue. Additionally, the loss of timber revenues has had a significant impact on the 18 O&C counties, some of which are highly dependent on these revenues to fund basic services. County payments under the SRS Act were designed to supplement revenue from the loss of timber sales. However, these payments are declining and will be phased out entirely in 2012. In light of these significant concerns, development of long-term planning guidance for the O&C lands will be an essential element to address the social and economic issues in western Oregon.

MAJOR ISSUES AND RECOMMENDATIONS

Coquille Restoration Act

In 1989, Federal Indian status was reestablished for the Coquille Tribe. The Coquille Restoration Act (P.L. 101-42), as amended by Public Law 104-208 of September 30, 1996,

established the 5,410-acre Coquille Forest and states that the Assistant Secretary for Indian Affairs, acting in consultation with the Coquille Tribe, is authorized to initiate development of a Forest Management Plan for the Coquille Forest. The Act requires the Secretary to manage the Forest under “applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act, and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future.”

The Coos Bay District of the BLM is the manager of the “adjacent and nearby Federal lands,” and as a result the Coquille Tribe adopted and incorporated by reference the Coos Bay District ROD and RMP of May 1995, and manages the Coquille Forest subject to the standards and guidelines in that plan.

With the initiation of the WOPR, which includes the Coos Bay RMP, the Tribe participated as an active member of the WOPR Steering Committee and the Department of the Interior exercised its trust responsibility. The Tribe stated that the relationship between the Tribe and the Coos Bay District and the State Director was purposeful and positive and that representatives of the Tribe were active participants in the planning process through the Draft EIS of the WOPR.

The Tribe, recognizing the influence of the Coquille Forest on their self-sufficiency, proposed a Tribal Cooperative Management Area (TCMA) of approximately 18,000 acres to include the Coquille Forest and similarly situated BLM-managed lands. The forest management design for the TCMA would focus on forest resilience and deemphasize the reserve system promulgated under the NWFP. The TCMA was to be based on an adaptive-management approach with an active monitoring program.

The adaptive-management approach for the TCMA would consider variable streamside buffers which were a point of concern for the Environmental Protection Agency (EPA), the NMFS, and the Oregon Department of Environmental Quality. As a result of water quality concerns expressed by the regulatory agencies and the lack of time between the draft and final EIS to complete the necessary analysis, the BLM dropped consideration of the TCMA in the final EIS and the RODs.

The Coquille Tribe was distressed that it was not consulted about the withdrawal of the RODs and emphasized that consultation on decisions with great import to the Tribe is a trust responsibility of the Department of the Interior. Management of the Coquille Forest, and the inextricable connection to the Tribe’s social and economic health, is now in a state of flux. The Tribe does not consider continued management of the Coquille Forest under the direction of the NWFP sustainable from an ecological and economical standpoint and is very concerned about its self-sufficiency. The concern about sustainability is based on the inability to practice economical forestry considering that 50 percent of the Forest is designated as reserves by the NWFP and because it’s many acres of mature forest is not suitable for thinning. The lack of a predictable harvest from the Forest has a significant social and financial impact on the Tribal community.

Recommendation

To satisfy obligations under the Coquille Restoration Act, the Task Force recommends that priority be given to the initiation of a planning process for the Coquille Forest and the proposed Tribal Cooperative Management Area. We recommend that the planning effort would result in an amendment to the 1995 Coos Bay RMP.

Three Components of the Northwest Forest Plan

The NWFP and the WOPR were two attempts to allocate land to meet the multiple uses to assure high-quality resource conditions and a predictable supply of timber and economic activity. Due to a variety of reasons, those objectives have not been fully achieved.

In a highly litigious atmosphere under the NWFP, the agencies have been managing controversy by designing timber projects that can expeditiously proceed through Section 7 of the consultation process (primarily thinning and fuels reduction projects). For example, the proposed BLM 2010 Program of Work identifies 90 percent of the proposed volume to be generated from thinning projects. This opportunistic and risk-avoidance approach results in not implementing projects in areas where they are needed to achieve the full suite of landscape objectives. This approach to forest management cannot continue indefinitely because as forests approach 80 years of age, active management within them is constrained by other environmental factors. Some Districts have predicted they will run out of thinning projects and harvest volume in a few years.

Three components frequently litigated are the ACS, Survey and Manage Mitigation Measures, and conflicts between designated northern spotted owl critical habitat and Matrix lands (lands that were designated primarily for timber harvest). If there is an expectation to provide jobs and income from forest management activities on O&C lands, then resolution of these three elements needs to occur.

Aquatic Conservation Strategy: The ACS provided a management strategy for public lands with a primary purpose of restoring and maintaining the ecological health of watersheds and aquatic ecosystems contained within them. It acknowledged that any management action that did not maintain the existing condition or lead to improved conditions in the long term would not meet the intent of the ACS. The ACS consists of four primary components: 1) Riparian Reserves, 2) Key Watersheds, 3) Watershed Analysis, and 4) Watershed Restoration.

Implementation of these four components, along with application of the standards and guidelines developed for various management actions, were to ensure action consistency with the ACS. Management actions designed consistent with the ACS could have site-level impacts, provided those impacts did not retard attainment of nine ACS objectives over time. The ACS has been the subject of significant litigation, with resulting interpretation by the Courts of what the ACS is, and what “consistency with the ACS” means. These Court interpretations, when coupled with ESA requirements, have effectively reduced options for long-term timber production under the NWFP. These issues remain today and will continue to impact the BLM’s ability to maintain a timber program from BLM lands within the range of listed salmonid species.

Four Court opinions issued from the District Court of Western Washington have resulted in inconsistent interpretations about the types of activities that can proceed under the NWFP. These inconsistencies will continue to influence the types of actions that will be implemented both in the short and long term until new or revised plans address the issues identified by the Courts. For example, timber sale actions that create sediment are viewed by some courts as inconsistent with the ACS; and therefore, inconsistent with “no jeopardy” biological opinions issued by the NMFS. The same level of sediment, generated by culvert replacement or watershed restoration activities is consistent with the ACS and with NMFS “no jeopardy” biological opinions. This is the genesis of the now common catch phrase “good dirt versus bad dirt.”

A discussion of these Court cases can help explain how some Courts ultimately concluded that site-level impacts from timber sale activities are inconsistent with the ACS, and how fallout from these decisions will impact all future actions until new or different interpretation is provided. It must be noted that the agencies created new direction and process after each decision was issued to address issues identified by the Court. Since November 2004, the agencies prescribed mandatory use of the “Analytic Procedures” (or AP) on all timber sale actions that “May Affect” ESA-listed salmonid species. The AP is thought to provide the logic and analysis necessary to meet the Court’s expectations; however, because no regeneration harvest timber sale actions have been proposed that require formal consultation, litigation on the ACS has occurred both at plan and project levels in the numerous *Pacific Coast Federation of Fisheries Association v. National Marine Fisheries Service* complaints.

PCFFA I: In 1998, Judge Rothstein determined that the NMFS cutthroat trout and coastal Coho biological opinions for the FS and BLM land use plans were valid, but the project level (timber sales and other projects) biological opinions reliance on ACS compliance lacked sufficient detail to determine no jeopardy. The Court invalidated those project-level biological opinions. The agencies redesigned and reissued the project-level biological assessments and the biological opinions to be more specific in addressing the ACS.

PCFFA II: These redesigned and reissued project level biological opinions were challenged again on the same “specificity” issue. The Court found that the compliance with the ACS for the purposes of determining no jeopardy was arbitrary and capricious and that projects must also be analyzed for jeopardy caused by minor, short-term effects. The Court invalidated these project level biological opinions. The Federal Government appealed Judge Rothstein’s adverse ruling to the Ninth Circuit Court of Appeals in January 2000. The Ninth Circuit Court of Appeals agreed in large part and affirmed Judge Rothstein’s ruling. However, the Ninth Circuit offered that there were other methods for evaluating jeopardy at the project scale.

PCFFA III: On December 7, 2000, the U.S. District Court enjoined 20 more project-level biological opinions and enjoined NMFS from using the methodology struck down in PCFFA II for any other timber sale covered by the 20 biological opinions before the Court. On December 20, 2000, the Court amended the decision to enjoin only the timber sale actions in the subject biological opinions, when it was brought to the Court’s attention that some biological opinions contained actions other than timber sales.

PCFFA IV: To provide clarification of the intent and implementation of the ACS, the action agencies completed a NWFP revision in 2003. The PCFFA plaintiffs immediately filed suit on grounds of inadequate NEPA and ESA (an EIS had been written and consultation completed on that ROD). In March 2006, a preliminary Report and Recommendation was issued by a Federal Magistrate Judge who found violations of ESA, and upheld the NEPA challenge. This report was adopted, in part, a year later by a District Court Judge. The Court found NEPA and ESA violations and enjoined the decision. As a consequence of this ruling, the holdings by Judge Rothstein in the PCFFA I-III opinions (i.e., no action can have a site-level degrade, all actions must conform to the ACS objectives at four spatial scales, and any degrade equates to jeopardy) remain in place. The report and summary, along with the District Court opinion, shed light on potential information needs for future plan and project level consultations.

Deficiencies identified by the Courts, for regeneration harvest timber sale project-level consultations, were presumed to be addressed through jointly developed (Department of the Interior, Department of Agriculture, and Department of Commerce) guidance, including use of mandatory analytic procedures. These procedures, referenced as the “AP,” were originally designed to provide additional analysis in an action agency’s biological assessment so that NMFS could develop a legally defensible biological opinion for “likely to adversely affect” timber sale actions. Because of the controversial nature of timber sale actions in the Pacific Northwest, the agencies issued direction in 2004 to use the AP on all timber sale actions that were determined to be “May Affect.” Despite widespread use of the AP, no regeneration harvest timber sales have been planned within the range of listed fish, so the AP remains untested in the Courts.

Survey and Manage Mitigation Measures: The NWFP included a species mitigation measure called Survey and Manage Mitigation Measures, which was added to the 1994 ROD to reduce risk to about 400 rare and little-known species. These species are within the NWFP area, are not listed under the ESA, are closely related to late-successional or old-growth forests, and are assumed to need additional protection because the reserve system and other standards and guidelines of the NWFP do not appear to provide reasonable assurance of species persistence.

The Survey and Manage Mitigation Measures require that the BLM and FS conduct surveys for certain species and manage habitat where those species were found. Surveys, which can take up to 2 years to complete, include both pre-disturbance surveys when certain ground-disturbing activities are proposed, and more general surveys to determine species’ range and status.

A variety of decisions have been made since 1994 to modify and/or eliminate this mitigation feature of the NWFP. The NWFP was amended in 2001 to remove common species, ease implementation, and provide an Annual Species Review (ASR) process for species removal or management category changes. In essence, the agencies were authorized to reassign species to different categories of pre-disturbance survey and site management requirements, or remove them completely from Survey and Manage Mitigation Measures, based on analysis of biological information and adequacy of other standards and guidelines in the NWFP providing for the conservation of the species. The ASR process was conducted in 2001, 2002, and 2003. As a result of litigation on the 2001 decision, a settlement agreement with Industry plaintiffs was

signed that committed the agencies to examine an alternative that replaced the Survey and Manage Mitigation Measures altogether.

In March 2004, a ROD was issued that removed the Survey and Manage Mitigation Measures from the NWFP. This decision was based on over 5 years of accumulated knowledge about these species, including some species that were shown to be prevalent; duplicative protections provided by the agencies' respective Sensitive or Special Status Species Programs; and significant implementation costs compared to small or nonexistent benefits to Survey and Manage Mitigation Measures species. The 2004 decision was successfully challenged by environmental plaintiffs; and in 2006, a Court order reinstated the 2001 ROD. All actions not in compliance with the 2001 ROD were enjoined. Later in 2006, all parties stipulated four categories of project exemptions (Pechman exemptions) to the Court order such that the agencies could go forward with certain projects without undertaking the Survey and Manage Mitigation Measures requirements.

In a separate case in November 2006 (*Klamath Siskiyou Wildlands Center v. Boody*), the Ninth Circuit Court ruled on a BLM timber sale that relied on the 2001 ASR supporting a red tree vole category change; and the subsequent 2003 ASR removal of red tree vole from Survey and Manage Mitigation Measures in part of its range, constituted a plan amendment that should have had NEPA analysis. The Circuit Court held the agencies' ASR process, which was intended to provide for flexible, adaptive management, constituted a plan amendment, and was thus required to comply with NEPA and FLPMA's planning provisions.

The agencies then set about preparing a Supplemental final EIS to address the NEPA violations in the 2004 ROD, as well as address the Ninth Circuit's decision in *Klamath Siskiyou Wildlands*. In 2007, the agencies signed a new ROD that again eliminated the Survey and Manage Mitigation Measures. Several groups immediately sued the agencies to overturn the 2007 decision alleging NEPA, NFMA, FLPMA, and ESA violations.

In December 2009, the District Court of Western Washington issued an order granting the plaintiffs' motion for partial summary judgment based on NEPA violations. The Court did not address the NFMA, FLPMA, or ESA claims. The Court indicated that resolution of those issues could affect the appropriate remedy, and declined to issue a remedy at this time. The Court directed the parties to submit a case management schedule for the remaining issues. In regard to NEPA, the Court found:

- The 2007 FS EIS lacked a true no action alternative that accounted for 1) the Ninth Circuit's decision in *Klamath Siskiyou Wildlands Center v. Boody* and 2) the stipulation modifying the injunction entered in *Northwest Ecosystem Alliance v. Rey*.
- The 2007 FS EIS did not disclose enough new information to ensure the public that elimination of Survey and Manage Mitigation Measures is warranted. Specifically, the appropriate level of accurate scientific data and analysis is lacking for 1) assessment of fire and fuel treatments, 2) costs of survey and management, and 3) data about Survey and Manage Mitigation Measures species.

- There is no NEPA violation in the agencies' consideration of global warming.
- In regard to disclosure of cumulative effects and whether the FS EIS should have considered the WOPRs, the question has now been mooted or is unripe given the voluntary withdrawal by the Acting Assistant Secretary for Lands and Minerals.

Northern Spotted Owl Critical Habitat and Matrix Lands: In 1992, northern spotted owl critical habitat was designated (prior to the NWFP). In 1994, the land allocation for the NWFP placed Matrix lands (i.e., lands intended for harvest) on top of critical habitat. This has created a perpetual conflict during consultation. In 2008, the FWS revised designated critical habitat; however, that revised designation has been challenged in the Courts along with the recovery plan. The FWS is proposing to revise the recovery plan and based on that revision, Fish and Wildlife Service will consider whether to revise critical habitat for the northern spotted owl. Harvests in forests in northern spotted owl critical habitat designations (both the 1992 and 2008) will continue to be problematic and likely face Court action until the recovery plan is revised and, if appropriate, critical habitat revisions are made.

Recommendations

The Task Force recommends the agencies review, update where necessary, and affirm consultation tools and procedures that were put into place to address deficiencies identified by the Courts in the Pacific Coast Federation of Fisheries Association v. National Marine Fisheries Service litigation (i.e., ACS consistency, four scales of spatial analysis, and analysis of jeopardy). Failure to resolve these issues could result in continued Court decisions invalidating biological opinions.

With the projected reductions in budgets over the out-years, it is critical that the agencies search for cost-efficiencies in the Survey and Manage Mitigation Measures. A possible recourse to facilitate this would be to initiate NEPA on the three annual species reviews that were completed so that the scientific information they contain can be applied. ***In the short term, the Task Force recommends BLM concentrate on projects in areas with a low probability of occurrence of Survey and Manage species (i.e., Pechman exemption including thinning projects in stands 80 years and younger).***

The Task Force also recommends that an Interagency Science Team reexamine the requirements for the conservation of old-growth dependent species, review the Survey and Measures list, and recommend revision as appropriate.

In the short term, the Task Force recommends that we defer harvests in mature forests where there is the potential overlay with northern spotted owl critical habitat designations (both the 1992 and 2008) until the recovery plan is revised and, if appropriate, critical habitat redesignated.

The Task Force recommends the FWS revise the recovery plan and, if appropriate, a critical habitat redesignation, as soon as possible so that the agencies can work together to align management actions.

Interagency Cooperation and Collaboration

Interagency Vision: The NWFP was an unprecedented effort by the Federal Government to develop a common vision for forest management of public lands in the Pacific Northwest. It was an attempt, by the highest levels of Government, to resolve natural resource conflict by addressing species conservation and habitat needs, while ensuring a sustainable flow of goods and services from Federal forests to help secure rural communities that depend upon those Federal lands for their livelihoods. Essential to successful implementation of the NWFP was a system of interagency governance composed of policy and implementation oversight teams ranging from the agency executives to staff.

A common vision can provide the integration between the agencies' missions. For example, species conservation is a dominant feature under the ESA and is used as a measure in evaluating jeopardy. Land management agencies operating under FLPMA or NFMA have a conservation mandate. It is generally accepted that the O&C Act is subject to the ESA and hence has a conservation mandate as well. Illuminating the conservation component of these statutes is a way of harmonizing the agency missions to create a common vision.

The WOPR planning effort, and reaction to the ROD, calls attention to the perception that the Federal agencies and the public do not share a common vision on the management of the O&C lands and the lands encompassed by the NWFP. This lack of common vision creates tension and conflict in the development of project-level actions designed to meet the goals and expectations of the overlying plan. Tension and conflict, both with the WOPR and the NWFP, have been expressed through the time it takes to get projects through the ESA Section 7 consultation process, the lack of up-front collaboration in designing projects, and frequent litigation on project actions. Lack of commonly agreed upon standards and commitment to adhere to those standards for project design criteria stalls project consultations.

There is a wide range of viewpoints on how well agencies cooperated and collaborated on WOPR. The Federal family consists of the management agencies, the BLM and FS, and the regulatory agencies, FWS, NMFS, and the EPA. In addition, numerous Oregon State agencies and many counties were involved in the development of WOPR and many had formal cooperating agency status. The Coquille Tribe had a seat on the steering committee. Many of these groups felt the Purpose and Need statement for the WOPR was narrow and overly constraining and developed without adequate collaborative involvement. Additionally, the deadline set by the settlement agreement for completion of the planning revision, December 31, 2008, prevented them from engaging in a more collaborative manner. For example, several State agencies stated that they were unable to adequately resolve issues, resulting in the letter of concern sent by Governor Ted Kulongoski (Appendix 7). The WOPR was viewed by many as disassociated from the NWFP, which reduced agency and public support of the effort. Although extensive outreach and interagency coordination opportunities were offered, some cooperating agencies felt the outcome was predetermined and did not fully engage.

Several cooperating agencies stated that, due to constraints of the Purpose and Need, they felt this would not be a truly collaborative effort. Consequently, this affected their commitment to the effort. Some expressed strong differences of opinion on the science and the assumptions

used in modeling. The regulatory agencies stated consultation was difficult at the landscape level because plans do not provide the detail necessary to evaluate the effect of an action on a species. The question of whether consultation was required led to considerable debate among the Federal agencies. These events led to frustration, a feeling of not being heard, and again, that the decision was preordained.

Several Federal agencies expressed concern over their inability to thoroughly examine models, assumptions, and outcomes during the planning process. The schedule appeared to drive very tight timeframes that inhibited opportunity for full interagency discourse on those efforts, which lead to the disagreement and distrust. On the other hand, the WOPR steering committee clearly established a science team that was to provide advice, direction, and oversight on the underlying science and analysis; however, the science team did not include scientists from cooperating agencies. Because the science team did not have all requisite backgrounds necessary for the full range of analysis undertaken, team members contracted with outside scientists on certain modeling efforts. It appears that most modeling and analysis efforts either directly involved expert scientists, or relied upon their research.

While the lack of up-front agreement and understanding of the underlying science and models used in the plan-level analysis created concerns with the regulatory agencies, this was of much greater concern for NMFS. This resulted in a basic distrust of the science and has translated into distrust at the project level when projects are proposed using this science. Largely due to the underlying statutes governing each agency's role in the consultation process, adoption of a "precautionary principle" has driven changes to project design. The precautionary principle is one in which, in light of inadequate information (or disagreement on the science), the most conservative approach is taken in developing final action design. The consultation process, unlike the NEPA process, does not employ an interdisciplinary team and projects can be modified by the action and consulting agency biologists to a point that raises issues about the scope of the existing NEPA analysis.

Some people raised a concern that proposed critical habitat for the northern spotted owl did not align with the late successional reserve allocations in the NWFP. This comment was also made regarding the involvement of the BLM with the FWS in identifying critical habitat, and whether there was undue influence in this process. These people believed the regulatory agencies must operate independent of the land management agencies in developing critical habitat. A similar concern was raised that key watersheds did not align with the high intrinsic potential habitat for fish.

Collaboration and ESA Consultation: The Pacific Northwest created streamlining consultation procedures to facilitate Section 7(a)(2) consultation on Federal actions. These have been memorialized in a Memorandum of Understanding between the action and consulting agencies and is designed to improve up-front coordination in project design to ensure actions minimize adverse effects to listed species and to reduce the timeframe in completing consultation. Streamlining consultation procedures are operational across the United States and can be effective in facilitating and expediting Section 7(a)(2) consultation requirements. These streamlining procedures are implemented with various degrees of success, depending upon geographic area, streamlining team membership, and species/habitat involved. A review of

streamlining procedures may lead to the identification of specific issues that can be addressed and resolved to ensure effective collaboration and coordination.

Federal land management agency actions that affect ESA-listed species require consultation with either the FWS or NMFS, depending upon the species, to ensure those actions do not jeopardize a listed species or cause the destruction or adverse modification of designated critical habitat. Actions that address and implement design features that provide for these needs will generally be found to avoid jeopardy and/or the destruction/adverse modification of critical habitat. This up-front coordination creates an administrative record that can be used to defend both the Federal action decision and its accompanying consultation.

Courts in the Pacific Northwest and the Ninth Circuit Court of Appeals have issued a variety of opinions on the proper construction and completion of Section 7(a)(2) consultation on Federal actions that do not in and of themselves create ground-level disturbance, such as RMPs. The agencies promulgated and signed a Memorandum of Agreement in 2000 that prescribed Section 7(a)(2) consultation procedures to programmatic and planning decisions. Despite this direction, consultation remains problematic for RMPs that do not contain any self-executing actions. Because there generally are no direct effects (i.e., no self-executing actions), analysis by design must focus on those future actions that will occur subordinate and in conformance with the plan at a later point in time – these are indirect effects which are reasonably certain to occur.

In 2009, the regulatory agencies lost a challenge where plaintiffs alleged incidental take must be quantified at the plan level, and the biological opinion must then have an accompanying Incidental Take Statement to afford the land management agency sanctions from the prohibition of take under Section 9 of the ESA. This has created a conundrum in the analysis process. Plans, by regulation and policy, do not generally analyze information at a site-specific level where take could be estimated. If plans were to provide this level of analysis, it potentially restricts adaptive change in the implementation of the plan.

Section 7 consultation at the project level is a different matter. Agency staff at the local level stated there was collaboration among the agencies in developing projects only to have those projects overturned or modified at higher levels in the regulatory agencies. It was mentioned that there was a lack of resources available within the regulatory agencies to support the work associated with forest product projects; that within NMFS, much of the work is delegated to contract employees. These employees generally do not stay with the agency long, and their replacements take a period of time to become effective in their jobs, resulting in slower response periods to management agency requests. Additionally, to assist the inexperienced employees NMFS provides them with a check list to work from on project evaluations. It was stated that this check list is broad and conservative to assure adherence to an overly cautious approach (“precautionary principle”). Additionally, it was stated that within NMFS all biological opinions in Oregon are reviewed by a single individual, resulting in a backlog and extensive time delays. Some staff indicated that project design criteria, when based on science and specific resource use, can be effective in facilitating Section 7 consultation. Lack of agreed upon standards or lack of understanding the basis for certain standards (e.g., artificial lighting in culverts over 150 feet long), can create tension in the consultation environment. Transparency in the underlying

science in the development of standards may create project check lists that all players can support.

Timelines for completing consultation (both formal and informal) are impacted in a variety of ways: inadequacy of the biological assessment; review processes of consultation documents; and signature authority for biological opinions and letters of concurrence. Because of the likelihood of legal challenge, both consulting agencies request analysis that is rigorous and transparent in a biological assessment (many biological assessments for a single project may exceed 100 pages). Although agreement on the sufficiency of this document may be established at the local staff level between the action and consulting agency biologists, internal review within the consulting agency may (and generally does) require additional analysis and revision. In NMFS, this internal review is handled by one individual for the entire state. The FWS does not have this review unless the project is considered highly controversial. Signing authority has been delegated to the State level in both agencies, so increased efficiency may be realized in the future.

The litigation history of the Pacific Northwest on regeneration harvest timber sales requires the action and consulting agencies to increase rigor of their administrative review process. The four Court opinions in *Pacific Coast Federation of Fishermen's Association v. National Marine Fisheries Service* have interpreted the NWFP ACS as not allowing any degradation at the site scale. Any environmental impact causes a “degrade” within the ACS. Any action that “degrades” is considered an adverse effect and is subject to formal consultation. The NMFS “no jeopardy” analysis is predicated on actions maintaining and restoring baseline conditions; hence, “no jeopardy” biological opinions are easily challenged under the Administrative Procedures Act as being arbitrary and capricious. Regeneration harvest sales, subject to consultation with the FWS, must demonstrate that removing northern spotted owl habitat is consistent with the long-term conservation of the owl, and that the incidental take of the owl must be enumerated. This was challenged by plaintiffs by demonstrating the continued decline in owl population numbers (*Oregon Natural Resource Council v. U.S. Fish and Wildlife Service*). This public debate, centering generally on the harvest of “old-growth” forests, was not resolved even under the NWFP. An outcome of the numerous Court challenges has been an inability to meet the social and economic goals of the NWFP; and as a consequence, rural communities have been impacted to a degree unanticipated in that plan.

The public debate on the management of “older forests” has not been resolved in the Pacific Northwest. As a consequence, plaintiffs have effectively used the Court system to halt the harvest of large trees, particularly when harvest is proposed using regeneration techniques. Because of the Court decisions requiring tracking incidental take (*Oregon Natural Resource Council v. U.S. Fish and Wildlife Service*) and requiring no-site level degradation can occur (*Pacific Coast Federation of Fisheries Association v. National Marine Fisheries Service*), the land management agencies are often faced with completing consultation documents that cannot reasonably meet those expectations. As a consequence, it can appear that the regulatory agencies are “dragging their feet as fast as they can” in these consultation proceedings. Until models for consultation can be developed and litigated and affirmed in the Courts, there is no advantage to either the consulting agency or land management agency for proposing timber harvest actions that adversely affect ESA-listed species. The reluctance to complete consultation on complex timber sale actions has bred frustration and distrust between the agencies.

Experience gained through the planning process and ongoing plan and project level Section 7 consultations has surfaced a variety of issues that future plans and projects will need to address. Of most recurring concern was the issue of delays in consultation. The Task Force found these were caused by the following conditions: actions requiring consultation are not fully understood by all participants in the consultation process, or are packaged in ways that leads to increased confusion as to expected outcomes; the Quality Assurance/Quality Control process in NMFS is a “choke point” for consultation documents; action agencies proposing projects known to carry a high level of controversy or changing project design late in the process; and lack of commonly agreed standards and commitment to adhere to those standards for project design criteria. Other issues affecting consultation include the need to develop more robust administrative records and processes that can withstand legal challenge (such as, how to complete plan-level consultation) and inefficiencies or problems with the streamlining consultation procedures.

Public Outreach and Involvement: The BLM had a massive and broad ranging public outreach effort during the development of WOPR. In addition to the involvement of cooperating agencies, the BLM maintained a mailing list of 1,600 individuals and organizations, held a total of 75 scoping meetings, and numerous key contact meetings during the 45-day formal scoping period. During the 5-month public comment period for the draft EIS (a minimum of 90 days is required), BLM held over 150 formal public meetings, open houses at District Offices, and meetings on request from organizations. The BLM used an innovative online web comment forum to both inform the public about the plan and to gather comments. The BLM received 3,000 comments during public scoping and 29,500 comments on the draft EIS. The agency also issued eight newsletters during the 29-month period from plan initiation until the draft EIS, detailing each step in the planning process.

Even with this level of outreach, many people believe the public involvement was not effective or collaborative. Concerns were expressed that only those people with a keen interest in the outcome participated and the general public did not participate. Some people and organizations only participated to the extent required to maintain standing for future Court actions. People also indicated there was distrust in the planning process. They felt the plan was an attempt to increase harvest levels, decrease protection for species and water quality, and the decision was made at the start. The settlement agreement was often cited as a reason for this distrust.

In general, representatives of the wood products industry were complimentary of BLM’s efforts to solicit public comments and the state-of-the-art online interactive public comment forum. Several noted that BLM went “above and beyond” the minimum requirements to solicit public input. In contrast, representatives from environmental organizations deemed the WOPR to be “dead on arrival” due to the settlement agreement which they felt dictated a plan revision with narrowly defined parameters. Although there were abundant opportunities for the public to participate, the environmental representatives stated these were not meaningful. Some stated the online interactive comment forum was established late in the process (i.e., when the draft plan was released); and, as a result, they felt it was an ineffective collaborative tool.

Members of Federal agencies, cooperators, and the public expressed a desire to have a meaningful collaborative process. Many think that any future effort must be collaborative in order to develop consensus around alternatives which will bring together the support of the

majority of the public, stakeholders, and cooperating agencies. Many cited the efforts at the local level demonstrating collaborative, early engagement of the public as seen in the Siuslaw National Forest, the Oregon Watershed Enhancement Board watershed councils, and non-Governmental organization work in numerous areas of Oregon. The Roseburg BLM Office was cited for beginning a local collaborative process to develop forestry projects. Some suggested designing an outreach process that would “go to the stakeholder” first, rather than holding large public meetings to inform the public of a proposed project.

Recommendations

The Task Force recommends the establishment of an Interagency Executive Steering Committee chartered by the Secretaries of the Interior, Agriculture, and Commerce to establish a common vision for the management of the NW forests and requirements of all government agencies in the regulation and management of the federal lands in the Pacific Northwest.

The Interagency Executive Steering Committee should address the implementation of the Endangered Species Act, Clean Water Act, FLPMA, NWFP, O&C Act etc, thus allowing a common government vision for the management of the federal forests in the Pacific Northwest.

The Task Force recommends an interdepartmental SOL/DOJ/OGC/NMFS attorney group work together to propose a consultation process under the ESA which addresses a means to evaluate the conservation contribution of land use plans. The result would be a revision, update, or replacement of the 2000 Memorandum of Agreement among FWS, NMFS, FS, and BLM. To the extent that consultation under ESA Section 7(a)(2) continues to be required at the plan level, such consultation could be successfully completed either by : 1) proposing a multi-year program of work with sufficient specificity to define the potential level of adverse effect (i.e., amount of incidental take); or 2) by identifying sufficient side-boards that provide the NMFS and FWS reasonable certainty that adverse effects will be minimized.

The Task Force recommends that the senior managers of the action and regulatory agencies review existing consultation procedures and the effectiveness of the Streamlined Consultation approach, and recommend improvements as appropriate. The senior managers should closely examine the added value of co-locating more NMFS and FWS personnel in BLM offices to facilitate project-level design and consultation.

The Task Force recommends the Interagency Executive Steering Committee establish a collaborative process with stakeholders throughout western Oregon to develop overarching principles for management of Federal forests. At some point near the culmination of this process, it may be desirable to provide a forum for the Secretaries to announce the successful development of the overarching principles that would be used in future land use planning efforts.

Appropriate Scope and Geographic Scale for BLM Planning

The NWFP integrated the management of the BLM-administered O&C and public domain lands of western Oregon with national forest lands under an ecosystem plan defined by the range of the northern spotted owl. The NWFP made land allocations and established standards, guidelines, and goals for both agencies. The BLM revised their RMPs in conformance with the NWFP. Shortly after the RMPs were revised, the Douglas County Timber Operators and AFRC filed suit alleging the BLM violated the O&C Act. In the resulting settlement agreement, the agency agreed to develop an alternative with only reserves necessary to meet regulatory requirements in the planning revision, WOPR.

The view of the effectiveness of the NWFP influenced views on the approach to planning. Some people believe the NWFP is paramount and working well, and any departure from the NWFP is unnecessary. Others believe the NWFP is a good base but is old and needs updating. Still others think the NWFP did not work, and either pointed to the decline in the northern spotted owl population or the agencies' inability to offer timber for sale at the level of the Probable Sale Quantity. Some stakeholders interpreted the goals or expectations as commitments or a social contract. Suggested alterations to the NWFP ranged from adding more lands to the reserve system to protect the northern spotted owl to implementing the standards and guidelines in the NWFP for regeneration harvest in the Matrix lands and active management in the Adaptive Management Areas.

There was a general consensus that we need large-scale regional guidance such as the NWFP to guide on-the-ground management for both the BLM and the FS. However, it was noted that this guidance must provide for flexibility to address site-specific conditions. It was expressed by many stakeholders that collaborative planning also needs to be conducted at the local level to address site conditions and design projects to meet the overarching landscape-scale guidance.

Many people believed collaborative planning was not effective at the ecosystem or NWFP scale, and true collaborative planning can only be achieved at the project level. Several people cited social, economic, and vegetative differences as a rationale for planning at a District level. The O&C lands range from urban to rural, with diverse economies to more timber dependent as one travels from north to south. These differences lead some people to suggest planning should, at a minimum, be split south and north or at the District level in order to tailor plans to local conditions.

The broad scale of the *2008 Northern Spotted Owl Recovery Plan*, and consequently the 2008 WOPR, did not allow for local differences in management. People tended to agree any planning level should include other lands; private, State, Tribal, and Federal. Some felt the O&C lands must consider and possibly mitigate for actions occurring on other ownerships. This was expressed in numerous ways, including O&C lands should mitigate affects from private land with respect to species protection and have more reserves, O&C lands needed to provide early succession and mid-seral vegetation to compensate for poor habitat on private land, and declines in species requiring this habitat. Others felt BLM should harvest more timber to compensate for reductions in private harvest or to provide larger timber not commonly found on private land.

Along the Coast Range and the Willamette Valley are the wetter and faster growing forests, with a predominance of Douglas Fir trees. The drier, slower growing, mixed conifer forests may be found in the Eastern Cascades and Klamath provinces which are also fire-adapted forests, historically characterized by higher fire frequency and lower fire severity. The West Cascades province has greater amounts of mature and structurally complex forests than other provinces, comprising 43 percent of all forest lands in the province and 49 percent of BLM-administered lands. Fire frequencies and intensities are moderate or highly variable.

It was suggested that any planning recognize these differences. Representatives from both the forest products industry and environmental organizations identified fire as a major threat to Pacific Northwest forests. Fire suppression has significantly altered the fire regime from high-fire frequency and low-fire severity to more frequent, higher-fire severity in the drier provinces. There was significant disagreement in both public opinion and the scientific community on how best to manage forests before and after fire.

Assuming that no single plan can effectively resolve the complexity of issues in the Pacific Northwest, a multi-scaled approach may work best to provide the interagency coordination needed to address Statewide issues and to provide the flexibility to address local and unique conditions: such as, recovery of the northern spotted owl, addressing drier fire-prone forests versus fast growing wet forests, reaching consensus on how best to manage local forests and addressing situations; such as, the Coquille Tribal lands and alternative management scenarios; such as, uneven-aged management in the Klamath Falls office.

Land Tenure: The checkerboard landownership pattern of the BLM-administered O&C lands throughout western Oregon has created unique management issues relative to the FS's solid blocks of National Forest System lands. Moreover, BLM lands comprise 11 percent of the land base in western Oregon; 30 percent is managed by the FS; 5 percent is managed by other Federal and State Governments; and 54 percent is held in private interests.

Some stakeholders expressed concerns that this checkerboard landownership pattern makes it difficult for the BLM to effectively manage for timber production and ecological benefits; such as, recovery of the northern spotted owl and other Federally listed species, conservation of old-growth forests and old-growth dependent species, fire management, watershed protection, access, and aesthetics.

It was recommended that plans should consider opportunities to consolidate landownership and create bigger blocks of contiguous land Federal land. This could contribute to improvements in forestland management and restoration; such as, provide for more effective reserves and management for threatened and endangered species, improved watershed protection, access and recreation opportunities. However, this suggestion was not universal as some people believed consolidation would impact access to the forest and limit people's recreation and gathering opportunities. Still others felt the checkerboard pattern was more effective in providing habitat connectivity and mitigating the effects on private land.

Some were in favor of land exchanges or land consolidation actions that would result in more contiguous acres of private lands which could add to the private timber base. These various

positions are not mutually exclusive; however, some members of the timber industry who were generally supportive of consolidation felt that any Federal forestlands that were blocked up this way would ultimately become off limits to timber harvest, thereby lowering the available acreage for future timber harvests. For this reason, several timber industry representatives we spoke with seemed skeptical that land consolidation would provide a positive outcome for them.

There are many positive aspects to consolidating landownership. While complicated, land tenure adjustments could provide for easier management of Federal forest lands and private lands alike. Land consolidation actions can be structured to meet multiple resource objectives, including: consolidating larger tracts of lands to sufficiently provide habitat for the most vulnerable species; ensuring enhanced watershed protection; providing for better access to Federal lands; and providing for private land timber production at a geographically diverse scale (i.e., spread across the range of O&C from north to south).

Recommendations

The Task Force recommends future planning efforts use the overarching principles developed through the regional collaborative process outlined by the Interagency Executive Steering Committee above. Each RMP/EIS effort would result in a Purpose and Need statement that is responsive to local issues as identified through a collaborative effort. For example, the southern (dry) Districts may need to address fire issues in a different context than the northern (wet) Districts (see Use and Implementation of Science recommendations).

To address the issues of scale and to more fully facilitate local participation and collaboration in the planning process, the Task Force recommends that each District (or combination of Districts with common planning issues) initiate a stand-alone RMP revision/EIS process. Given budget constraints, it is likely that not all plans will be initiated at the same time.

The Task Force recommends that new plan evaluations be completed on the existing plans to determine priority for revisions and whether there are common issues that would indicate an opportunity to combine District planning and EIS efforts.

The Task Force recommends that a Land Tenure Team be established to conduct a comprehensive review and identify opportunities to adjust landownership patterns to meet species conservation and other resource management objectives in western Oregon. The land use planning process would be used to identify BLM lands that would facilitate landownership adjustment.

Use and Implementation of Science

Stakeholders regularly raised the topic of science during the Task Force discussions. The Task Force heard many times that there was a large investment in the science conducted to support the analysis in WOPR, and that it would be unfortunate if this effort were not incorporated into whatever comes next. Many thought the BLM did a very good job of using the best science available and developing and incorporating Geographic Information System into the planning process. The agency was complimented on its ability to present spatial products (maps) in

significantly improved detail over the NWFP. However, some cooperating agencies did not feel they had sufficient time to thoroughly review the science and, consequently, could not support it.

People also indicated the NWFP was 16 years old and newer scientific studies needed to be incorporated into the planning process. The BLM established a science panel and science consistency review process. Some people believed the science consistency review process did not go far enough and new and emerging science was not universally accepted and needed to be peer reviewed. Many of the discussions indicated that there is more detailed information from inventory and monitoring since the development of the NWFP. There were concerns expressed that the WOPR used science and studies that were not universally accepted by the other Federal agencies or the public to make the assumptions for the modeling that was used to determine the alternatives and their impacts.

The BLM managers and staff indicated high confidence in the quality of science used to develop the vegetation modeling and to conduct the environmental impact analysis for the western Oregon Plan Revision. The BLM staff on the planning team conducted informal consultations and small group meetings with scientists to provide early and rapid feedback regarding proposed analysis methods. Draft descriptions of proposed analytical methods were shared with the scientists who responded with suggestions to improve methods.

In June 2006, the BLM hosted a “State of the Science” Workshop held at Oregon State University. The Workshop brought together scientists, forest managers, interested citizens, interest groups, and plan cooperators to discuss a series of state-of-the-science reviews prepared for the BLM to address critical information needs related to the WOPR.

Recommendation

The Task Force recommends that the science work (including base data, modeling protocols, and assumptions) be independently reviewed by an Interagency Science Team. Work that is determined to be complete, appropriate, and applicable to support management strategies should be used in future planning efforts.

Social and Economic Considerations

In conversations with stakeholders, many discussed the concept of sustainability in terms of economic and community sustainability. This was expressed through the decrease in timber harvest resulting in the loss of forest products infrastructure, loss of jobs, and the negative effects of decreased receipts to O&C counties. There is much concern over the uncertainty of Federal timber being made available for the timber industry and the attendant receipts for the counties. This was particularly troublesome for several of the southern counties where it was relayed that without Federal timber opportunities within the next year or two, closures of several mills could be expected. Conversely, some people questioned if it was the role of the BLM or Federal Government to sustain communities.

Others expressed this concern in terms of sustaining wildlife habitats, old trees and old growth, and the associated habitat for old-growth dependent species. They believed any reductions in

riparian or late-successional reserves decreased the likelihood of sustaining habitat for these species. There was also deep concern from some stakeholders over the proposed use of regeneration harvests (timber harvest that results in a new forest stand) and the harvest of older trees.

Currently, the SRS Act provides a safety net for the reduction in county receipts but the Act is scheduled to expire in 2012. There was grave concern by some members of the O&C counties and private industry on how this funding loss will affect the counties if timber receipts are not there to replace the SRS Act funding.

There was general agreement on the need to harvest forest products and support communities. However, there was much disagreement on how this could be accomplished and to what degree. Some people believe forest products and jobs can be maintained through thinning younger forests, generally less than 80 years of age, commonly derived from past harvest and replanting. Others believe a young stand thinning strategy is not sustainable as the remaining trees will grow older without any young trees to take their place. These people indicate some level of regeneration harvest is needed to maintain age class diversity and a sustainable flow of forest products. A number of BLM employees and stakeholders indicated that there are less than 5 years of young stands left which can be thinned.

Several people mentioned the concept of providing ecosystem services from Federal lands. These services include clean water, habitat, recreation, solitude, and forest products. People believe there are opportunities for the Federal Government to invest in restoration activities and restoration jobs, which would provide agreed upon ecosystem services.

Additionally, the pressing need to address fire risk due to heavy fuels buildup in many areas was referenced as a source of jobs and forest products, and that the fuels reduction program could and should be expanded to provide a source of jobs, forest products and resource protection.

It is not likely that the economic decline felt in many rural resource-dependent communities over the past 20 years will dramatically improve in the near term. Further, the fiscal squeeze being felt by O&C counties will not subside or be reversed in the near term; most solutions will likely take years to implement or bear fruit.

The Federal Forests Advisory Committee was established by the Oregon Board of Forestry to “. . . craft a document that articulates the State’s vision for how Federal forestlands should be managed to contribute to the sustainability of Oregon’s overall forest land base.” Its January 2009 final report, *Achieving Oregon’s Vision for Federal Forestlands*, addresses the entire suite of issues faced by BLM managers in western Oregon (environmental, social, economic, and process) and offers a range of actions that could be taken at the local, State, and Federal levels to address these issues.

The Governor’s Task Force on Federal Forest Payments studied options for addressing the decline in timber receipts from all Federal forestlands in Oregon, not just O&C forestlands. The Task Force’s *Final Report* (January 2009) is a clear-eyed view of the revenue problems faced by the State, counties, and local communities due to loss of Federal forest revenues and also

addresses other issues with Oregon's tax structure. The report contains a number of recommendations aimed at local, State, and Federal levels, recognizing that the issue is complex and needs involvement at all levels in order to diversify Oregon's tax base as well as diversify forestland management practices to make them more sustainable.

The decline in county revenues for all 18 of the O&C counties has had a tremendous impact on many of the counties. The stop-gap measures provided by the SRS Act have softened the impact; but, over time, those revenues have been declining and the impacts to the counties continue. Further, revenues from the SRS Act will phase out completely in 2012. Several county commissioners and others we spoke with had ideas on ways to alleviate the crisis and move toward a future less tied to timber receipts. One novel idea was to use the carbon storage qualities of Federal forests to generate a significant new revenue stream and de-emphasize the need for timber production as a means of generating revenue while providing for healthy forest management. Other ideas brought forward by the Governor's Task Force on Federal Forest Payments may be worth exploring.

Recommendations

For the short term, given diminishing opportunities for thinning projects on O&C lands coupled with the considerable uncertainty in the BLM forest management program, the Task Force recommends BLM and the Forest Service jointly develop a 3-year program of work, updated annually and coordinated with the regulatory agencies. This will support the Secretary's commitment to provide forest industry jobs across western Oregon and bridge the gap until completion of new land use plans. To facilitate this joint program of work, the agencies should explore options for sharing staff and resources to optimize their ability to both restore forest landscapes and support rural communities.

The Task Force recommends that BLM partner with a State organization (such as the Oregon Economic Development Association) to use the information developed by the Governor's Task Force to assess opportunities for economic diversification in O&C counties, and how resources from BLM's O&C lands could contribute to those diversification efforts as well as local revenues.

Budget Structure and Performance System

The current budget performance system focuses on timber outputs relative to forest health and restoration. This drives the development of actions to meet the timber target, often without collaboration with other agencies or the public. A near-term effort would be to explore redirecting BLM's budget and performance focus away from timber targets and toward forest health and restoration. Timber outputs can be an outcome of forest health and restoration efforts in conjunction with other restoration outcomes. This change in budget focus would change how forest resources are managed and would recognize the role timber harvest would play within the wider objective of forest health and restoration. Essentially, the goals would be reframed so that outcomes and outputs would be in line with restoration and healthy forests objectives. Timber production would be an element of those objectives.

Recommendation

The Task Force recommends BLM explore redirecting the current budget and performance focus away from timber targets and toward forest health and restoration. Treating acres may allow for a greater variety of forest goods and ecosystem services to be recognized.

Appendices

- 1. Western Oregon Task Force Members**
- 2. DOI News Release: Interior Launches Work Plan for BLM Western Oregon Forests**
- 3. List of Participants and Contacts**
- 4. Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act) (Public Law 75-405)**
- 5. American Forest Resource Council Settlement Agreement with Forest Service and Bureau of Land Management**
- 6. Website Addresses for Federal Forestlands Advisory Committee Report: Achieving Oregon's Vision for Federal Forestlands and Executive Summary of the Governor's Task Force on Forest Payments and County Services**
- 7. Governor Kulongoski's Letter of Concern to the BLM on WOPR Issues**

Appendix 1

Task Force Members

Task Force Team Lead

Linda Rundell BLM, New Mexico State Director

Task Force Members

Mike Taylor BLM, Arizona Deputy State Director, Division of Resources
 Theresa Hanley BLM, Montana Deputy State Director, Division of Resources
 Wendy Favinger BLM, Washington, DC; Business Manager
 Ann B. Aldrich BLM, Washington, DC; Strategic Advisor, Human Capital Management
 Karl Stein BLM, Redding (CA) State Office; Natural Resources Specialist
 Robert Towne BLM, Oregon; Spokane (WA) District Manager
 Elena Fink BLM, Washington, DC; Program Analyst
 Ralph Morgenweck FWS, Region 6 (Denver, CO); Senior Science Advisor
 Theresa Rabot FWS, Region 1 (Portland, OR); Assistant Regional Director,
 Ecological Services
 Bill Timko USDA, Forest Service, Washington, DC; Deputy Director, Forest
 Management National Forest System
 Calvin Joyner USDA, Forest Service, Deputy Regional Forester, Region 6, Portland, OR
 Nancy Munn NOAA, National Marine Fisheries Service, Portland, OR;
 ESA Policy Analyst

Appendix 2

DOI News Release

Release Date: 10/14/09

Contacts: Frank Quimby (DOI) 202-208-6416

Jody Weil (BLM) 503-808-6027

Joan Jewett (FWS) 503-231-6211

Interior Launches Work Plan for BLM Western Oregon Forests

WASHINGTON, DC – Secretary of the Interior Ken Salazar today launched a Fiscal Year 2010 work plan for Bureau of Land Management (BLM) forests in western Oregon that will add economic certainty for local communities while protecting endangered species.

In addition to a proposed schedule of 62 timber sales under the Northwest Forest Plan, Salazar announced that federal field teams will identify future proposed timber sales with high likelihood of being sold and harvested and a special task force will take a fresh look at forest management issues in Oregon.

“In these tough economic times, we must do all we can to provide certainty for western Oregon timber mills and communities while conserving our land, water, and wildlife,” said Secretary Salazar. “These steps will help protect jobs and timber infrastructure, improve coordination between agencies as they review proposed timber projects, and move us toward a long-term strategy for forest management that is environmentally sound and economically sustainable.”

“The 62 sales under the 2010 scope of work could provide over 200 million board feet for local mills, supporting jobs and local infrastructure” said BLM Director Bob Abbey. “It is important that we continue to provide a reasonable amount of sales under the Northwest Forest Plan while, at the same time, we work towards creative, long-term solutions.”

For comparison purposes, from 2005 to 2008, the BLM has offered an average of 206 million board feet (MMBF) per year, of which approximately 150 MMBF per year was harvested.

"We are committed to working with BLM to process its 2010 program of work as expeditiously as possible in full compliance with Endangered Species Act consultation requirements," said U.S. Fish and Wildlife Service Director Sam Hamilton.

In July, a plan developed and proposed during the previous administration, called the Western Oregon Plan Revision, was withdrawn for failure to adequately complete Endangered Species consultation. Since then, the BLM has been coordinating with the FWS to develop specific projects that can be implemented under the Northwest Forest Plan while meeting ESA criteria and using the best available science.

-more-

The steps announced today include the following:

1. Schedule of Proposed FY 2010 Timber Sales

To provide additional certainty to local mills and local communities, the Bureau of Land Management released today a list of 62 proposed timber sales that may be offered over the next 12 months and that could provide approximately 230 MMBF for local mills. The BLM has completed Endangered Species Act consultation with the FWS on 46 of the 62 timber sales, with an associated volume of 199 million board feet. Some sales, primarily in the Roseburg District, are currently undergoing consultation, while others, primarily in the Medford District, are awaiting consultation.

Before these sales are offered, consultation with FWS or NOAA will be completed. The sales also are subject to appropriate National Environmental Policy Act analyses and public participation.

Since the withdrawal of the Western Oregon Plan Revision in July, BLM has managed western Oregon forests under the Northwest Forest Plan and has sold 72 MMBF of timber in 22 sales with a value of \$5.4 million.

2. BLM-FWS Field Teams

Secretary Salazar also announced that BLM and FWS professionals and other Federal agency specialists in Oregon are working together on interagency teams to jointly review potential and proposed timber sales. The mission of these field teams is to identify future sales under the Northwest Forest Plan that will provide greater economic certainty to local communities whose economies depend on sustainable timber harvests, while protecting endangered species. The joint field teams have completed their review on 46 of the 62 timber sales for 2010 and they will be continuing these reviews. The teams will also begin the review of potential sales that may be offered in the next 2-3 years.

3. BLM Special Review Task Force

Secretary Salazar also announced today that he has asked BLM Director Bob Abbey and FWS Director Sam Hamilton to establish a special interdisciplinary task force to take a fresh look at processes that have guided the management of BLM forests in western Oregon. The task force will make recommendations to the Secretary on a process for finding a long-term strategy for forest management so that the O&C lands can reasonably, predictably and sustainably provide economic, social and ecological benefits. The special task force, which will include professionals from BLM, FWS, and other federal agencies including the U.S. Forest Service, will look at issues such as opportunities for public involvement, building consensus, scale of planning, and interagency coordination. The task force will provide its report to Secretary Salazar by spring, 2010.

For additional information, please visit www.blm.gov/or.

- BLM -

Appendix 3

List of Participants and Contacts

Dr. Paul Adams, Society of American Foresters
Jessica Adamson, Senator Merkley's staff
Hilary Barbour, Congressman Blumenauer's staff
Paul Beck, Herbert Lumber
Kevin Birch, Oregon Department of Forestry
Jack Blackwell, Rocky Mountain Elk Foundation
Kristin Boyles, Earthjustice
Marvin Brown, Oregon Department of Forestry
Rick Brown, Defenders of Wildlife
Susan Jane Brown, Western Environmental Law Center
Ken Carloni, Umpqua Watersheds
Alex Cuyler, Intergovernmental Liaison - Lane County
Dr. Roy Elicker, Oregon Department of Fish and Wildlife
Allyn Ford, Roseburg Forest Products
Jim Geisinger, Association of Oregon Loggers
Don Hardwick, Swanson Group
Doug Heiken, Oregon Wild
Heath Heikkila, American Forest Resource Council
Russ Hoeflich, The Nature Conservancy
Annabelle Jaramillo, Benton County Commissioner
Scott Keep, Seneca Jones Timber
Andy Kerr, The Larch Group
John Kober, Pacific Rivers Council
Kim Kratz, National Oceanic and Atmosphere Administration (NOAA)
Cameron Krauss, Swanson Group Van Manning, Public Lands Foundation
Knox Marshall, Murphy Plywood
Cathy McDonald, The Nature Conservancy
George McKinley, Small Diameter Collaborative, SW Oregon
Curt Melcher, Oregon Department of Fish and Wildlife
Ross Mickey, American Forest Resource Council
Matt Millenbach, Western Rivers Conservancy
John Murphy, Murphy Plywood
Judy Nelson, Public Lands Foundation
Sara O'Brien, Defenders of Wildlife
Tom Partin, American Forest Resource Council
Link Phillipi, Rough N' Ready Lumber
Dave Powers, Environmental Protection Agency
John Pugsley, Congressman Schrader's staff
Bob Ragon, Douglas Timber Operators
Bill Richardson, Rocky Mountain Elk Foundation
Dale Riddle, Seneca Jones Timber
Doug Robertson, Douglas County Commissioner

Dominick Della Salla, National Center for Conservation Science and Policy
Bob Sallinger, Audubon
Dr. Hal Salwasser, Dean, OSU School of Forestry
Mary Scurlock, Pacific Rivers Council
George Sexton, KS Wild
Dr. Craig Shinn, Executive Leadership, Hatfield School of Government,
Portland State University
George Smith, Executive Director - Coquille Tribe
Pete Sorenson, Lane County Commissioner
Mike Tehan, National Oceanic and Atmosphere Administration NOAA
Tom Toman, Rocky Mountain Elk Foundation
Sara Vickerman, Defenders of Wildlife
Tim Vredenburg, Director of Land Resources & Environmental Services – Coquille Tribe
Cindi West, PNW Research Station
Joe Whitworth, Freshwater Trust
Ken Wienke, Boise Cascade Timber Company
Greg Wolf, Federal Forest Advisory Committee
Duncan Wyse, Oregon Business Council
Tom Yonkers, Vice Chairman - Coquille Tribe
Randy Zustiak, Murphy Plywood

Bureau of Land Management Employees:

Carol Benkosky, Lakeview District Manager
Jay Carlson, Roseburg District Manager
Ginnie Grilley, Eugene District Manager
Mike Haske, Deputy State Director for Resource Planning, Use, and Protection
Aaron Horton, Salem District Manager
Mark Johnson, Coos Bay District Manager
Mike Mottice, Associate State Director
Tim Reuwsaat, Medford District Manager
Ed Shepard, State Director
Jody Weil, Deputy State Director Communications
Roseburg District Management Team
Salem District Management Team

Western Oregon Plan Revision (WOPR) Steering Committee (all District Managers and Deputy State Directors, the State Director, and Associate State Director, of the OR/WA Bureau of Land Management):

Ann Boeder, Lead planner for WOPR Team
Chris Cadwell, WOPR Core Team member
Lee Folliard, Branch Chief
Richard Hardt, WOPR Core Team member
Jerry Hubbard, WOPR Core Team member
Rob Huff, Conservation Planning Coordinator
Nikki Moore, WOPR Core Team member

Open interview through video teleconference: Salem, Eugene, Roseburg, Coos Bay, Lakeview, and Medford Districts and State Office, Division of Resources employees.

Appendix 4

Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act) of 1937 (Public Law 75-405)

AN ACT

Relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provisions in the Acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), as amended, such portions of the revested Oregon and, California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed, except as provided in "Section 3 hereof, for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities: *Provided,* That nothing herein shall be construed to interfere with the use and development of power sites as may be authorized by law.

The annual productive capacity for such lands shall be determined and declared as promptly as possible after the passage of this Act, but until such determination and declaration are made the average annual cut there from shall not exceed one-half billion feet board measure: *Provided,* That timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market.

If the Secretary of the Interior determines that such action will facilitate sustained-yield management, he may subdivide such revested lands into sustained-yield forest units, the boundary lines of which shall be so established that a forest unit will provide, insofar as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region; but until such subdivision is made the land shall be treated as a single unit in applying the principles of sustained yield: *Provided,* That before the boundary lines of such forest units are established, the Department, after published notice thereof, shall hold a hearing thereon in the vicinity of such lands open to the attendance of State and local officers, representatives of dependent industries, residents, and other persons interested in the use of such lands. Due consideration shall be given to established lumbering operations in subdividing such lands when necessary to protect the economic stability of dependent communities. Timber sales from a forest unit shall be limited to the productive capacity of such unit and the Secretary is authorized, in his discretion, to reject any bids which may interfere with the sustained-yield management plan of any unit.

SEC. 2. The Secretary of the Interior is authorized, in his discretion, to make cooperative agreements with other Federal or State forest administrative agencies or with private forest owners or operators for the coordinated administration, with respect to time, rate, method of cutting, and sustained yield, of forest units comprising parts of revested or reconveyed lands,

together with lands in private ownership or under the administration of other public agencies, when by such agreements he may be aided in accomplishing the purposes hereinbefore mentioned.

SEC. 3. The Secretary of the Interior is authorized to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 14 of the Act of June 28, 1934 (48 Stat. 1269), any of such revested or reconveyed land which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes. Any of said lands heretofore classified as agricultural may be reclassified as timber lands, if found, upon examination, to be more suitable for the production of trees than agricultural use, such reclassified timber lands to be managed for permanent forest production as herein provided.

SEC. 4. The Secretary of the Interior is authorized, in his discretion, to lease for grazing any of said revested or reconveyed lands which may be so used without interfering with the production of timber or other purposes of this Act as stated in section 1 : *Provided*, That all the moneys received on account of grazing leases shall be covered either into the "Oregon and California land-grant fund" or the "Coos Bay Wagon Road grant fund" in the Treasury as the, location of the leased lands shall determine, and be subject to distribution as other moneys in such funds: *Provided further*, That the Secretary is also authorized to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

SEC. 5. The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. The Secretary of the Interior is further authorized, in formulating forest-practice rules and regulations, to consult with the Oregon State Board of Forestry, representatives of timber owners and operators on or contiguous to said revested and reconveyed lands, and other persons or agencies interested in the use of such lands. In formulating-regulations for the protection of such timberlands against fire, the Secretary is authorized, in his discretion, to consult and advise with Federal, State, and county agencies engaged in forest-fire-protection work, and to make agreements with such agencies for the cooperative administration of fire regulations therein: *Provided*, That rules and regulations for the protection of the revested lands from fire shall conform with the requirements and practices of the State of Oregon insofar as the same are consistent with the interests of the United States.

[PUB. 405,] TITLE II

That on and after March 1, 1938, all moneys deposited in the Treasury of the United States in the special fund designated the "Oregon and California land-grant fund" shall be distributed annually as follows;

(a) Fifty per centum to the counties in which the lands revested under the Act of June 9, 1916 (39 Stat. 218), are situated, to be payable on or after June 30, 1938, and each year thereafter to each of said counties in the proportion that the total assessed value of the Oregon and California grant lands in each of said counties for the year 1915 bears to the total assessed value of all of said lands in the State of Oregon for said year, such moneys to be used as other county funds.

(b) Twenty-five per centum to said counties as money in lieu of taxes accrued or which shall accrue to them prior to March 1, 1938, under the provisions of the Act of July 13, 1926 (44 Stat. 915), and which taxes are unpaid on said date, such moneys to be paid to said counties severally by the Secretary of the Treasury of the United States, upon certification by the Secretary

of the Interior, until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.

From and after payment of the above accrued taxes said 25 per centum shall be accredited annually to the general fund in the Treasury of the United States until all reimbursable charges against the Oregon and California land-grant fund owing to the general fund in the Treasury have been paid; *Provided*, That if for any year after the extinguishment of the tax indebtedness accruing to the counties prior to March 1, 1938, under the provisions of Forty-fourth Statutes, page 915, the total amount payable under subsection (a) of this title is less than 78 per centum of the aggregate amount of tax claims which accrued to said counties under said Act for the year 1934, there shall be additionally payable for such year such portion of said 25 per centum (but not in excess of three-fifths of said 25 per centum) , as may be necessary to make up the deficiency. When the general fund in the Treasury has been fully reimbursed for the expenditures which were made charges against the Oregon and California land grant fund said 25 per centum shall be paid annually, on or after June 30, to the several counties in the manner provided in subsection(a) hereof.

(c) Twenty-five per centum to be available for the administration of this Act, in such annual amounts as the Congress shall from time to time determine. Any part of such per centum not used for administrative purposes shall be covered into the general fund of the Treasury of the United States; *Provided*, That moneys covered into the Treasury in such manner shall be used to satisfy the reimbursable charges against the Oregon and California land-grant fund mentioned in subsection (b) so long as any such charges shall exist.

All Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act. Approved, August 28, 1937.

Appendix 5

SETTLEMENT AGREEMENT

1.0 Parties and Effective Date

This Settlement Agreement is entered into by and between American Forest Resource Council, Western Council of Industrial Workers, Douglas Education Service District, South Umpqua School District, Michael Roy McMurray, Nathan Smith, William Wynkoop, Myron Mead, Alden Lish, Daniel Newton, Galihier & Huguely Associates, Inc., Seneca Jones Timber Co., C & D Lumber Co., and Swanson Brothers Lumber Co. (jointly referred to as AFRC); the Association of O & C Counties and Douglas County (jointly referred to as the Counties); and the Secretary of the Interior and Secretary of Agriculture (Secretaries). The Effective Date of this Settlement Agreement shall be the date it is last signed by the attorneys for AFRC, the Counties and the Secretaries, which signatures may be made in counterpart if necessary.

2.0 Recitations

- 2.1 On April 13, 1994, the Secretaries issued the Record of Decision (1994 ROD) for planning documents known as the Northwest Forest Plan (NWFP) to govern the administration of 22.1 million acres of federal land within 19 national forests in western Oregon, western Washington and northern California administered by the U.S.D.A. Forest Service (Forest Service) and the Bureau of Land Management (BLM) Coos Bay, Eugene, Lakeview, Medford, Roseburg and Salem Districts as well as a BLM district in California. The Forest Service and BLM when collectively referred to in this Settlement Agreement are referred to as the Agencies.
- 2.2 The NWFP created 10 million acres of reserves where development of late successional or riparian habitat is the primary objective and timber harvesting is only allowed if it meets the goals of accelerating the development of the late successional or riparian habitat.
- 2.3 The Secretary of the Interior, through the BLM, manages 2.2 million acres of forest land in western Oregon of which the NWFP designated 1.6 million acres in Late-Successional and Riparian Reserves. These BLM lands are subject to the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O & C Act), 43 U.S.C. § 1181a. In 1995 the BLM adopted Resource Management Plans for its Coos Bay, Eugene, Lakeview (Klamath Falls Resource Area), Medford, Roseburg and Salem Districts that adopted the reserve designations and other standards and guidelines of the NWFP.

- 2.4 Programmed timber harvest in the NWFP occurs in the 22 percent of the total area designated as Matrix or Adaptive Management Areas (AMAs).
- 2.5 The NWFP established ten AMAs as units designed to develop and test new management approaches to integrate and achieve ecological, economic, and other social and community objectives. The AMAs have scientific and technical innovation as goals, with a guiding principle of allowing freedom in forest management approaches to encourage innovation in achieving the goals of the NWFP. The primary technical objectives of the AMAs are development, demonstration, implementation, and evaluation of monitoring programs and innovative management practices that integrate ecological and economic values.
- 2.6 The NWFP estimated an annual probable sale quantity (PSQ) of 958 million board feet to be taken from the matrix and the AMAs over the first decade that the NWFP would be in effect (the period ending April 13, 2004). In addition, approximately 100 million board feet of other wood products not considered as merchantable were estimated to be produced annually on Matrix and AMA lands. Representing neither minimum nor maximum levels, the PSQ reflected the Agencies' best assessment of the average amount of timber likely to be offered annually in the NWFP area over the succeeding decade, following a start-up period.
- 2.7 Subsequent to the promulgation of the NWFP, the PSQ has been adjusted downward to 805 million board feet due to revised calculation of riparian reserves and adjustments to individual National Forest Land and Resource Management Plans and BLM Resource Management Plans.
- 2.8 A variety of factors have limited the ability of the Agencies to implement timber sales and produce the PSQ.
- 2.9 The objective of Late-Successional Reserves (LSRs) is to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species. Thinning (precommercial and commercial) may occur in stands up to 80 years old. The purpose of these silvicultural treatments is to benefit the creation and maintenance of late-successional forest.
- 2.10 The PSQ is based on the long-term sustained yield, from the lands suitable for timber production, from within the Matrix and AMA land use allocations. Harvest volume from treatments within LSRs and riparian reserves does not contribute to PSQ.

- 2.11 The Agencies estimate that 1.8 million acres of LSRs could benefit from thinning to enhance late successional conditions. Thinning one million of these acres could be accomplished with commercial timber sales.
- 2.12 The Agencies estimate that with appropriate funding, thinning sales in the LSRs could produce approximately 4-6 billion board feet of timber over 20 to 30 years, after a start-up period.
- 2.13 The parties expressly acknowledge that in order to carry out the provisions of this Settlement Agreement, except for those obligations which can be accomplished in fiscal years 2003 and 2004 with funds budgeted for those years, additional funding targeted for the accomplishment of the objectives of this settlement will have to be obtained from Congress.
- 2.14 The Forest Service and BLM expected to use AMAs to explore alternative ways of managing, and the Agencies developed plans for the management of AMAs. In upholding the NWFP, the Federal District Court for the Western District of Washington specifically noted that alternatives designed to increase timber harvest could be tested in the AMAs.
- 2.15 A model was developed to evaluate outputs from silvicultural practices and resource values on private/federal land exchanges in the Umpqua Basin which is the Multi-Resource Land Allocation Model identified in §349 of the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. 106-291 (October 11, 2000).
- 2.16 AFRC has pending a case in the United States District Court for the District of Columbia currently captioned *American Forest Resource Council et al. v. Clarke*, Civil No. 94-1031 TPJ (D.D.C.) (the AFRC O & C case), appeal pending No. 02-5024 (D.C. Cir.). The Second Amended Complaint in the AFRC O & C Case asserts 15 claims for relief alleging that in approving the 1994 ROD the Secretary of the Interior violated the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2; the O & C Act; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, *et seq.*; the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701, *et seq.* and the Federal Records Act (FRA), 44 U.S.C. §§ 3101, *et seq.* The O & C Act claims allege that the NWFP cannot establish reserves on O & C lands, and that the NWFP eliminates sustained yield timber harvest management of the O & C lands in violation of the O & C Act. The federal defendants have filed an answer to the Second Amended Complaint denying all such allegations.

- 2.17 The Counties filed an action against the Department of Interior captioned *Association of O & C Counties v. Babbitt*, Civil Number 94-1044 (the Counties O & C case), in the U.S. District Court for the District of Columbia also challenging the management of BLM lands in Oregon and California under the 1994 NWFP Record of Decision. In their complaint, the Counties alleged violations of the O & C Act, FLPMA, FACA, and NEPA. This action was settled by the parties in 1997, and the matter was dismissed without prejudice. A copy of the settlement agreement (Counties O & C case Settlement Agreement) is annexed as Exhibit A. As part of the Counties O & C case Settlement Agreement, the plaintiffs in the Counties O & C case agreed to forbear from filing challenges "based on the allegations of violations made in the complaints in the present cases or on any allegations substantively similar to those made in those complaints prior to the year 2001." Counties O & C case Settlement Agreement ¶ 1. In another provision of the Counties O & C case Settlement Agreement, the BLM agreed that "in any major revisions to the [BLM Resource Management Plans], the range of alternatives given detailed consideration would include an alternative that emphasizes sustained-yield timber production on the O & C lands, except insofar as limitations on timber management on the O & C lands would be necessary to comply with the Endangered Species Act, Clean Water Act, or any other law to which management of the O & C lands must adhere." *Id.* ¶ 2.
- 2.18 Although neither the Secretary of Agriculture nor the Forest Service are defendants in the AFRC O & C case, or were defendants in the Counties O & C case, they are undertaking the obligations herein in the recognition that the NWFP is an integrated plan for management of BLM and Forest Service lands within the range of the Northern Spotted Owl, and that were AFRC to succeed in their O & C Act claims, or were the Counties to succeed in a new action raising a similar challenge to the management of O & C lands, a larger burden would fall on the Forest Service to meet the ecological objectives of the NWFP.
- 2.19 BLM Resource Management Plans in western Oregon would normally come up for revision every 15 to 20 years.
- 2.20 The O & C Act provides in part that O & C lands shall be "managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a timber supply, protecting watersheds, and contributing to the economic stability of local communities and industries." The O & C Act has been interpreted by the United States Court of Appeals for the 9th Circuit in *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174 (1990).
- 2.21 To avoid further costly litigation, and without admission of any liability or

wrongdoing by either party, the parties to the AFRC O & C Case desire to settle the claims raised in that case, and the parties to the Counties O & C Case desire to amend the Counties O & C case Settlement Agreement to modify the obligations and remedies set forth therein to conform to those set forth in this Settlement Agreement.

3.0 Agreements

- 3.1** Beginning with the budget for Fiscal Year 2005, the BLM and the Forest Service severally agree that their annual program and budget requests to the Department of the Interior in the case of BLM, and to the Department of Agriculture in the case of the Forest Service, will include a request for additional funds targeted to fully fund the obligations expressed in paragraphs 3.2, 3.4 and 3.5 below.
- 3.2** Contingent upon obtaining the necessary funds as described in paragraphs 2.13 and 3.1 above, the Agencies will use their best efforts every year beginning in Fiscal Year 2005: (1) to offer timber sales in an amount equal to the annual PSQ in the NWFP, currently estimated at 805 million board feet, for as long as there is a PSQ for the area covered by the NWFP, and (2) to offer thinning sales as described in paragraph 2.12 of approximately 300 million board feet per year to the extent that and for so long as such sales are consistent with the ecological objectives of the NWFP.
- 3.3** The Agencies agree to propose research/demonstration projects (projects) in three AMAs to evaluate alternative silvicultural practices and standards and guidelines based on the principle of management across the entire landscape, as follows:
 - 3.3.1** By October 1, 2003, the BLM and the Forest Service will identify proposed projects which (a) meet the purpose for which the AMA was established; (b) provide an opportunity for significant experimentation; (c) can be implemented in a timely fashion; and (d) are cost effective.
 - 3.3.2** In consultation with the plaintiffs, the BLM and the Forest Service will select from the proposed projects identified pursuant to paragraph 3.3.1, two projects for which the environmental analysis can be completed in accordance with the schedule set forth in paragraph 3.3.4 below under current projected fiscal year 2003 and 2004 funding levels. A lead agency for each project will also be selected by the BLM and the Forest Service.
 - 3.3.3** At least one proposed project in one AMA will test the Multi-Resource Land Allocation Model, or a variation thereof.

- 3.3.4 The schedule for the projects selected pursuant to paragraph 3.3.2 as being able to proceed under the 2003 and 2004 funding levels is as follows:
- 3.3.4.1 By November 1, 2003, the Agencies will identify the proposed projects, and the AMAs where they would be implemented;
 - 3.3.4.2 If it is determined by the agency that an Environmental Assessment (EA) is the NEPA documentation required for a particular project, the EA and any needed ESA section 7 consultation will be completed by September 1, 2004.
 - 3.3.4.3 If it is determined by the agency that an Environmental Impact Statement (EIS) is the NEPA documentation required for a particular project, the EIS and any needed ESA section 7 consultation will be completed by April 1, 2005.

3.4 For the projects identified pursuant to paragraph 3.3.2 that do not have sufficient funding to proceed in fiscal years 2003 and 2004, a schedule for completion of the environmental analysis will be developed by the BLM and Forest Service, in consultation with the plaintiffs, upon receipt of required funding levels as described in paragraphs 2.13 and 3.1 above.

3.5 Contingent upon obtaining the necessary funds as described in paragraphs 2.13 and 3.1 above, the BLM will revise the Resource Management Plans for its Coos Bay, Eugene, Lakeview, Medford, Roseburg and Salem Districts by December 31, 2008. At least one alternative to be considered in each proposed revision will be an alternative which will not create any reserves on O & C Lands except as required to avoid jeopardy under the Endangered Species Act. All plan revisions shall be consistent with the O & C Act as interpreted by the 9th Circuit Court of Appeals.

4.0 Miscellaneous Provisions

4.1 This Settlement Agreement resolves the disputes between the parties relating to the issues presented in the AFRC O & C case, and amends the Counties O & C case Settlement Agreement, superseding in its entirety the provisions beginning in

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paragraph 1 of the Counties O & C case Settlement Agreement with the words: "The Association of O & C Counties and Douglas County covenant ..." through and including paragraph 2 thereof. This Settlement Agreement resolves all claims by the Counties or AFRC which were asserted or could have been asserted in both cases, but does not address or resolve any other pending, actual or potential dispute between the parties including all disputes presented in any other pending legal action. Nothing in this Settlement Agreement shall be construed as being prejudicial to any purchaser's pending or future claim concerning any timber sale contract.

- 4.2 AFRC's appeal is currently being held in abeyance in the Court of Appeals pending status reports from the parties. Provided the District Court indicates its disposition to dismiss the AFRC O & C case without prejudice in accordance with the terms of this Settlement Agreement, AFRC and the Secretaries will jointly request the Court of Appeals to remand the AFRC O & C Case to the District Court for dismissal without prejudice in accordance with this Settlement Agreement. Such dismissal shall not create, support or constitute a defense to any claims AFRC or the Counties may have against the outcome of any administrative action undertaken by the Agencies pursuant to this Settlement. The dismissal shall call for each party to bear its own costs and attorney fees.
- 4.3 The District Court shall retain jurisdiction through June 30, 2009 to consider any motion by AFRC and/or the Counties to enforce this Settlement Agreement, which may not be filed until 60 days after the moving party has given written notice to the Agencies of their failure to perform any agreement required by paragraphs 3.1 through 3.5. Alternatively, after giving such notice AFRC and the Counties or either of them may move, under Fed.R.Civ.P. 60(b), to vacate, as the case may be, (1) the dismissal of the AFRC O & C case without prejudice pursuant to this Settlement Agreement, and/or (2) the dismissal of the Counties O & C case without prejudice entered March 17, 1997, and the federal defendants shall not, unless they dispute in good faith the moving party's contention that they have failed to perform as alleged, oppose any such motion. Upon the entry of an order vacating the dismissal of its case, AFRC and the Counties shall each thereafter be free to pursue their claims for relief. In the event that the Agencies are otherwise in compliance with this Settlement Agreement, but Congress fails to provide necessary additional funding targeted for accomplishment of the objectives of the Settlement Agreement, and the objectives of the Settlement Agreement which are conditional on additional funding as set forth in paragraphs 3.2, 3.4 and 3.5 are not substantially performed for that reason, then AFRC and the Counties shall be entitled, as their sole remedy in this instance, to move to vacate the dismissals of their respective cases under Fed.R.Civ.P. 60(b), in the manner and subject to the conditions set forth above, and pursue their claims for relief.

- 4.4 The election by AFRC or by the Counties to seek enforcement of this Settlement Agreement prior to June 30, 2009 as set forth in paragraph 4.3 shall preclude either of them from alternatively moving to vacate the dismissal of its case by reason of the alleged failure to perform that forms the basis for the motion to enforce the Settlement Agreement. Subsequent to June 30, 2009, the sole remedy of AFRC and the Counties for any alleged failure to perform shall be to move to vacate the dismissals of their respective cases. In the event that the Court shall enter an order vacating the dismissal of either the AFRC O & C case or the Counties O & C case, all obligations under this Settlement Agreement shall cease.
- 4.5 The parties agree that this Settlement Agreement shall not be taken or construed as an admission of liability or potential liability on the part of either party, or an admission of the existence of any facts upon which liability could be based, but rather that any such liabilities or potential liabilities have been and are expressly denied by the parties.
- 4.6 Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded the Agencies under any statutes administered by them or applicable to their activities or by general principles of administrative law.
- 4.7 Nothing in the terms of this Settlement Agreement shall be construed to limit or deny the power of the Agencies to promulgate or amend regulations or to otherwise amend or revise Resource Management Plans, Land and Resource Management Plans, the NWFP, or any other planning document contemplated by the NWFP.
- 4.8 No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.
- 4.9 The terms of this Settlement Agreement constitute the entire agreement of the Parties, and no statement, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.
- 4.10 Each undersigned representative of the Parties hereto certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Settlement Agreement. This Settlement Agreement becomes effective upon signature of the undersigned representatives as of the date of last signing.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be

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executed as of the date shown below.

Steel Rives LLC

By: [Signature]

Per A. Ramford

Attorneys for AFRC as that term is defined above.

Date: August 1, 2003

[Signature]

Kevin Q. Davis

Attorney for the Counties as that term is defined above.

Date: 8/1/03

Thomas L. Sansonetti

Assistant Attorney General
Environment and Natural Resources
Division

U.S. Department of Justice

By: [Signature]

Wells D. Burgess

Attorneys for the Secretaries as that term is defined above.

Date: July 29, 2003

SETTLEMENT AGREEMENT

in the case of Association of O&C Counties and Douglas County, Oregon, v. Habbit and Dombek, C.A. No. 96-5222 (D.C. Cir.); Civ. No. 94-1044 (U.S.D.C. D.C.)

1. The parties will jointly request the Court of Appeals to stay the appeal and issue a limited remand to the District Court on the basis of this settlement agreement to seek vacation of the District Court's dismissal of the cases, and instead enter voluntary dismissal without prejudice. Provided the District Court agrees to vacate its previous order on the basis of this settlement, the parties will then jointly request dismissal of the appeal. The Association of O&C Counties (AOCC) and Douglas County covenant that they will not file an action in any federal court against the Bureau of Land Management or its officers challenging the validity of the 1994 Northwest Forest Plan or the 1995 Resource Management Plans of the BLM in western Oregon (RMPs) based on the allegations of violations made in the complaints in the present cases or on any allegations substantively similar to those made in those complaints prior to the year 2001. The parties agree that the time between the date of execution of this Agreement and January 1, 2001, inclusive, will not be included in computing the time limited by any statute of limitations for any cause of action subject to this paragraph. Nor will that time period be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. The parties agree that any applicable statute of limitations shall be tolled during and for that period.

2. The BLM agrees that in any major revisions to the RMPs, the range of alternatives given detailed consideration would include an alternative that emphasizes sustained-yield timber production on the O&C lands, except insofar as limitations on timber management on the O&C lands would be necessary to comply with the Endangered Species Act, Clean Water Act, Clean Air Act, or any other law to which management of the O&C lands must adhere. It is understood that the BLM would not be making any commitment to select such an alternative as the preferred alternative, and that it is expected that the BLM will develop as wide a range of reasonable alternatives as possible for consideration. A minor amendment to a current RMP resulting from the adaptive management process would not be considered to be a major revision. The obligation to consider the sustained-yield timber production alternative would not apply to changes to RMPs short of major revisions, and nothing herein would alter the discretion of the BLM to amend the RMPs pursuant to the adaptive management process without undertaking a major revision. Agreement to include any such alternative in future revisions is not an admission that the current Resource Management Plans of the BLM are in violation of the O&C Lands Act, or any other law. Similarly, nothing in the settlement agreement, or the fact of settlement, would be construed as an admission by any party of either a violation of law or the lack thereof.

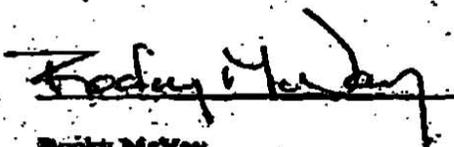
3. Under BLM's existing Resource Management Plans and planning regulations, the BLM conducts plan evaluations every three years. The BLM agrees to allow the county governments who make up the membership of the AOCC to participate in the development of these periodic evaluations, including consultation during preparation of, and review of, draft documents prior to their publication and dissemination to the general public. In addition to other relevant information and comments, BLM specifically agrees to give consideration in these evaluations to the studies and research developed by the State and AOCC referenced in the following paragraph. The BLM and the AOCC will cooperate in finding ways to make the county government participation in these plan evaluations as meaningful and effective as possible. The first plan evaluation on the BLM's western Oregon Resource Management Plans will be done in 1998, which will followed every three years thereafter (i.e. 2001, 2004, 2007, etc.).

4. The AOCC intends to request the State of Oregon to join in studies that examine ways to improve forest health and increase sustainable timber production on the O&C lands consistent with the objectives and goals of the Northwest Forest Plan. The BLM will agree to cooperate with the AOCC for purposes of these studies, including by providing requested existing information and data, and access to BLM's resource specialists, to the extent possible without interfering with the BLM's ability to carry out its program.

5. Nothing in this agreement will require the BLM to expend funds in excess of appropriations available under law.

Dated: Jan 30, 1997

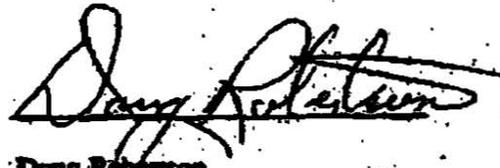
For the Association of O&C Counties:



Rocky McVay
Executive Director of the
Association of O&C Counties

Dated: 1-30-97

For Douglas County:



Doug Robertson
Commissioner, Douglas County

Dated: Jan 29 1987

For the Bureau of Land Management:

Elaine Zielinski

Elaine Zielinski
State Director, Oregon/Washington State Office

Dated: JAN 28 1987

For the Department of the Interior:

Paul Smyth

Paul Smyth
Acting Associate Solicitor, Division
of Land and Water Resources

Dated: Jan 29 1987

For the Defendants in Association of O&C Counties, et al. v. Babbitt, et al.:

David C. Shilton

David C. Shilton
Attorney, Appellate Section
Environment & Natural Resources Division
Department of Justice

CERTIFICATE OF SERVICE

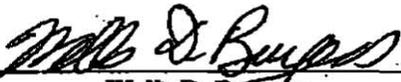
I hereby certify that on this 8th day of August, 2003, I served a copy of the foregoing **JOINT MOTION UNDER RULE 60(b)** on counsel of record by depositing same in the United States mail, postage prepaid, addressed to:

Per. A. Ramford,
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Attorney for the Association of O & C Counties and Douglas County



Wells D. Burgess

Appendix 6

Governor's Reports Website Addresses

**Final Report of the Governor's Federal Forest Advisory Committee:
Achieving Oregon's Vision for Federal Forestlands (January 2009)**

http://www.oregon.gov/ODF/BOARD/docs/FFAC_Color_Report_and_Cover_for_Web.pdf

Task Force on Federal Forest Payments and County Services: Final Report

http://governor.oregon.gov/Gov/docs/toffp/final_report_020309_am_nobkmk.pdf

Appendix 7

Governor Kulongoski's Consistency Review of WOPR



THEODORE R. KULONGOSKI
Governor

December 8, 2008

Mr. Edward Shepard, State Director
Bureau of Land Management
333 SW 1st Avenue, 6th Floor
Portland, OR 97204

Dear Mr. Shepard:

Please accept this letter as my consistency review of the Proposed Resource Management Plan (PRMP or "plan") for the Oregon and California Lands (O&C). My comments address the PRMP's consistency with state and local plans, programs and priorities as well as the twelve principles I stated on January 10 of this year when I commented on the draft plan and draft environmental impact statement.

First, let me commend you and your staff for the hard work you have all undertaken to develop a plan for the O&C lands. I share your commitment to the completion of a plan that establishes certainty for Oregon's counties relative to funding for local governments, assures a continued and sustainable stream of wood products to contribute to local economies, and contributes the full range of other social and ecological benefits that these publicly-owned lands must continue to provide. That is why I signed a cooperating agency memorandum of agreement with your agency on December 1, 2005, committing my office and several state agencies to participate in the plan's development. It is also why I am undertaking this review with a continued commitment to assist the Bureau in adoption of a plan that meets my twelve principles, that is right for the O&C lands, that meets the needs of our counties and Oregonians in general and that can gain the support of our citizens and especially our members of Congress.

Following are my comments and concerns relative to the twelve principles I identified for the plan earlier this year:

Principle 1: The final plan must be fully implemented through adequate leadership, and supported with adequate human and financial resources:

Comments: I have serious concerns as to whether we will be able to achieve the full implementation of this plan, and thus, a great deal of uncertainty as to whether this principle will be met. The plan does not address the issues I raised relative to the need for the plan to be fully institutionalized within the Bureau of Land Management (BLM) and supported with adequate

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resources both within BLM and cooperating federal agencies. I will explain further my concerns relative to cooperating federal agency support in my comments on Principle Number 4. The issue of full institutionalization of the plan can be addressed through plan revisions that identify how BLM will direct its staff and operating priorities to assure implementation. However, the larger issue of obtaining support for implementation and subsequent appropriations from Congress, thereby offering a reasonable chance for planned management activities to occur without being sidetracked by disagreement, litigation or administrative appeals, is of great concern to me. I have serious doubts that there is the necessary support from our members of Congress and even greater doubt that the new federal Administration will be committed to this plan without a significant role in its adoption.

Principle 2: A robust and detailed monitoring strategy supported by appropriate research must be implemented as a key part of BLM's plan. The monitoring strategy must examine key questions related to the implementation, effectiveness and validity of plan assumptions and support adaptive management.

Comments: In my comments on Principles Number 5 and 12, I will address specific concerns and recommendations relative to water quality and to addressing the effects of rapid climate change. In general, the PRMP identifies monitoring relative to whether planned management has been implemented but generally lacks information on monitoring planned to assess the effectiveness of management activities. It is my understanding that BLM presently undertakes a number of programs for effectiveness monitoring and intends to continue those. It would be helpful if the PRMP would more clearly point those out and identify how such monitoring will inform planned adaptive management.

Principle 3: The BLM's plan must produce predictable and sustainable timber harvest as well as non-timber resources and values that contribute to the economic stability of the Oregon and California Lands Act counties.

Comments: I recognize that significant changes have been made to the Western Oregon Plan between the original and final drafts to address concerns that the State has raised through our collaborative relationship. Significant improvements have been made to address environmental concerns while still providing the economic benefits and local government funding critical to Oregon. While estimated annual timber harvest has been reduced from 727 million board feet (mmbf) in the draft to 502 mmbf in the PRMP, this harvest level is an increase over the allowable cut of 268 mmbf under the NW Forest Plan and an actual harvest of 80 to 130 mmbf in recent years. The projected revenues to counties will be \$75 million from the PRMP or about 65 percent of 2005 Secure Rural Schools payments for O&C lands. I also appreciate the sensitivity that BLM has shown over concerns about timber harvesting methods. Final harvest acres have been reduced under the PRMP, more of the volume will come from commercial thinning, and areas in southern Oregon will be managed using uneven aged management.

Mr. Edward Shepard, State Director
 December 8, 2008
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While I am generally supportive of the direction the PRMP takes with regard to harvest, my concern as to the feasibility of implementing this plan also applies to the targeted harvest levels. The decision to defer Section 7(a)(2) consultation under the Endangered Species Act (addressed below), the reduction of riparian conservation areas without a coincident commitment to monitoring and assurances that water quality and aquatic habitat will be maintained or enhanced over current levels (also addressed below), and the potential for the new Administration and Congress to shift federal land management to a more protective environmental orientation are of concern as we strive to increase harvest levels on these lands. Consideration must be given by BLM to a phased approach to increasing harvest that takes into account the following: 1) Public sensitivity to clearcutting and harvest of older trees in areas of complex forest structure, 2) The philosophy and guidance of a new presidential administration, 3) The need to build the confidence and support of the Oregon Delegation and Congress for increased harvest levels which will then translate into appropriations to BLM, 4) The fact that reauthorization of the Secure Rural Schools and Community Self-Determination Act gives us additional time to address factors 1 through 3.

Principle 4: The BLM's approach to managing habitat must comply with the federal Endangered Species Act, aid in the recovery of listed species, and complement strategies for managing state-owned lands.

Comments: The PRMP's approach to the federal Endangered Species Act (ESA) is my greatest concern as to whether the plan is consistent with my twelve principles, and at the same time complies with federal and state laws. While the plan was under development, I had every reason to believe that the PRMP would fully address ESA issues and BLM's obligations under federal and state law. Both the United States Fish and Wildlife Service and the National Marine Fisheries Service (Services) were participating as cooperators in the planning process. Further, under a 2000 Memorandum of Agreement between BLM and the Services, there is a clearly-stated commitment by BLM to completing consultation with both Services Under Section 7(a)(2) of the ESA as part of the preparation of programmatic and landscape scale plans like the PRMP. Therefore, I was surprised to learn that the decision was made late in the planning process to not complete consultation, to instead issue a finding of "no effect" and to defer consultation to a project-specific approach as the plan is implemented over time.

The decision by BLM that consultation is not required for the PRMP appears to have been made unlawfully and is inconsistent with the ESA. Such a decision requires the concurrence of the Services and should have been made based upon a biological assessment prepared by BLM. The letters offered by the Services to you in response to your notice to them to defer consultation to a later time do not represent concurrence. Further, no biological assessment was prepared that would support your decision or the concurrence of the Services.

Mr. Edward Shepard, State Director
December 8, 2008
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The decision by BLM to not complete consultation raises potential problems for the State of Oregon in obtaining an Incidental Take Permit (ITP) under a Habitat Conservation Plan (HCP) for the Elliott State Forest. In preparing an HCP, the State has assessed the impact of the PRMP on listed species. However, because a federal determination of effects on listed species will not have occurred before adoption of the PRMP, it may be difficult for the Services to make a final determination on an ITP for the Elliott.

The decision by BLM could create an undesirable precedent for other federal actions in Oregon that are subject to ESA requirements. Because BLM's decision to forgo consultation at this level of planning is, in Oregon's view, a unilateral action that lacked concurrence from the Services, it opens the door for other agencies to do likewise.

For these reasons, and because the adoption of a plan that is broadly supported and that can withstand all legal or political challenges is a prerequisite for me, I am requesting that you resume and complete consultation with the Services before the PRMP is adopted.

Principle 5: Riparian management strategies and best management practices must maintain and restore freshwater habitat for salmonids, contribute to the conservation of other fish and wildlife habitats, and comply with the federal Clean Water Act including sustaining beneficial uses consistent with state water quality standards and protecting source water used for drinking water.

Comments: The Bureau of Land Management proposes an adaptive management approach as it undertakes harvest. The PRMP commits to very limited monitoring to inform that adaptive approach and is not consistent with Principle Number 2. Therefore, BLM should strengthen its monitoring program and work directly with the Oregon Department of Environmental Quality (DEQ) and Western Oregon Plan Revision Science team to include greater effectiveness monitoring information so needed adjustments can be made to BLM land management in the future. Further, harvest activities can have a significant impact on community drinking water systems particularly if they take place upstream of a drinking water intake. Even though the riparian protection in the PRMP is an improvement over the preferred alternative in the DEIS, there should be a commitment by BLM to work with DEQ and communities in advance of harvests in watershed areas above community drinking water intakes to address concerns on the part of water users. My concerns are similar to those expressed to you by the Environmental Protection Agency in its letter of November 25, 2008.

I am on record in support of the further designation of approximately 98 miles of the Rogue River and associated tributaries for federal Wild and Scenic River status. Associated with this is my support for the designation of 58,340 acres of associated BLM lands for wilderness status, of which nearly 57,000 are O & C lands. Federal designation of these areas would not only contribute to the conservation of key fish and wildlife habitats stated in this principle, it

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would also meet the goals of Principle Number 6 (The BLM plan must support the Oregon Conservation Strategy) and Principle Number 10 (The plan must provide a sustainable mix of outdoor recreation opportunities). These designations are also supported by a number of Oregon's members of Congress. The PRMP not only does not recognize the interest and support for these designations in their entirety, it proposes harvest and would allow associated road-building in critical portions of these sensitive areas that are wholly incompatible with Wild and Scenic River or Wilderness status. The plan should be amended to address the candidate status of the entire area proposed for designation, and management and protection strategies should be identified that enhance the outstanding natural qualities of these areas.

Principle 10: The plan must provide a sustainable mix of outdoor recreation opportunities.

Comments: My office has heard from a number of private property owners who live adjacent or near to O&C lands that have been designated in the PRMP as Off Highway Vehicle (OHV) riding areas. The property owners have expressed concern over the manner in which the designations are made and the potential for the designations to result in uncontrolled riding and unplanned trail development on these federal lands. The landowners' specific concern is that this method of authorizing OHV riding (based upon past experience) will increase and exacerbate trespass problems with OHV use. The PRMP does not adequately describe how BLM will monitor and regulate OHV use for adverse environmental impacts, how this use will be managed adaptively to mitigate those impacts and how BLM will respond to and assist neighbors who experience trespass or property damage.

Principle 12: The plan must address the interactions of forests and a changing climate; including forest management strategies that can help in sequestering carbon or reduce overall emissions into the atmosphere, as well as addressing the forest health risks that may occur due to global climate change.

Comments: In my January 10, 2008 letter, I asked that the plan include adaptive management strategies to explore options relative to ensuring that future forest ecosystems are better able to accommodate a warmer climate and to maximize the potential of these forests to sequester carbon. I find the PRMP lacking in descriptions of the necessary research, monitoring and decision frameworks to assess the effects of climate change over time and to inform adaptive management. Addressing the serious problems of global warming for Oregon's environment and economy has been one of my top priorities. With over half of Oregon's lands in federal ownership and with half of that ownership in forests, the effect of climate change on these lands will be enormous. The role these lands will play in helping Oregon adapt to the effects of climate change is equally enormous. Because the O&C lands represent such a large component of Western Oregon, their contributions to addressing climate change are as important as the other values they offer. I am asking that the PRMP for the O&C lands be enhanced with detailed strategies for monitoring for the effects of global warming, a commitment to supporting needed

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research to address critical uncertainties, and identification of a decision framework for adaptations that will be needed. It remains my hope that the PRMP address global warming and climate change in a way that will serve as a model for planning for federal and non-federal forests throughout the West.

Conclusion: I find that the public was not afforded a full opportunity during the DEIS phase of this process to comment on a number of the issues raised in this letter, especially the issue of BLM's decision not to complete the ESA consultation. Therefore, I am asking that the Bureau initiate a new comment period to allow Oregonians to address these issues.

Further, I am recommending that the PRMP not be adopted and that the Record of Decision not be signed until the concerns and inconsistencies I have mentioned herein are addressed. This will also give us the opportunity to work together with other state leaders, our members of Congress and the new Administration in Washington, DC, to build broader understanding and support for the PRMP.

However, I do not want a new comment period or an extension of time to finalize the Record of Decision to be viewed as reasons to sidetrack this plan. The commitment of time and resources to this planning process by both state and federal agencies has been considerable. More importantly, their efforts have shown that state and federal agencies can work together effectively and in good faith to advance plans for better management of our federal forest lands. I want us to build on these efforts, not abandon them.

Now that we have secured a reauthorization of the Secure Rural Schools safety net payments for four years, it is imperative that we continue to work together to secure the adoption and implementation of a final management plan for O&C lands within that four-year timeframe. This will require continuing efforts to ensure that the plan, when finalized, can be implemented free of legal challenges and deliver the healthier forests and sustainable harvest yields that we have been seeking since enactment of the Northwest Forest Plan more than a decade ago.

Sincerely,



THEODORE R. KULONOSKI
Governor

TRK:mcjb
c: Secretary Dirk Kempthorne