



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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IN REPLY REFER TO:
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EMS TRANSMISSION 03/24/2014
Instruction Memorandum No. OR-2014-024
Expires: 09/30/2015

To: District Managers
Attn: Planning Leads, Program Leads, and Planning and Environmental Coordinators

From: State Director, Oregon/Washington

Subject: Direction regarding the Survey and Manage Mitigation measure as a result of court ruling in *Conservation Northwest et al. v. Boone et al.*, Case No. 08-1067-JCC (W.D. Wash.)

Program Area: Northwest Forest Plan Implementation, Survey and Manage Mitigation Measure.

Purpose: On February 18, 2014, the District Court for the Western District of Washington issued a remedy order in the case of *Conservation Northwest et al. v. Boone et al.*, No. 08-1067-JCC (W.D. Wash./No.11-35729 (9th Cir.)). This was the latest step in the ongoing litigation challenging the 2007 Record of Decision (ROD) to modify the Survey and Manage Standards and Guidelines.

A key component of that February 18, 2014 order was to allow the Forest Service and Bureau of Land Management (BLM) to continue developing and implementing projects that met the previous 2011 Consent Decree exemptions or species list, as long as certain criteria were met. The Consent Decree outlined a number of project types that were exempt from Survey and Manage pre-disturbance surveys, allowed for reduced or no buffers of known sites for those projects, and outlined a Survey and Manage list of species.

The purpose of this instruction memorandum (IM) is to detail what types of actions meet the criteria set forth in the February 18, 2014 court order to allow use of the 2011 Consent Decree and to provide language to be included in National Environmental Policy Act (NEPA) documents (attachment). These instructions apply only to projects initiated on or before April 25, 2013.

Policy/Action: The court order states:

“The Agencies may proceed developing and implementing projects under the terms of the 2011 Consent Decree for projects that fall within one or more of the following categories of projects: (1) projects in which any Survey and Manage pre-disturbance survey(s) has been initiated (defined as at least one occurrence of actual in-the-field surveying undertaken according to applicable protocol) in reliance upon the Consent Decree on or before April 25, 2013; (2) projects, at any stage of project planning, in which any known site(s) (as defined by the 2001 ROD) has been identified and has had known site-management recommendations for that particular species applied to the project in reliance upon the Consent Decree on or before April 25, 2013, and (3) projects, at any stage of project planning, that the Agencies designed to be consistent with one or more of the new exemptions contained in the Consent Decree on or before April 25, 2013.”

In order to meet the court order regarding the use of the 2011 Consent Decree, the project file should: (1) have clear documentation that the project meets at least one of the criteria listed Above and (2) include the language contained in Attachment 1 in the NEPA document for projects that comply with this direction.

For projects initiated on or before April 25, 2013 that did not use the Consent Decree, and for projects initiated after April 25, 2013, additional direction concerning use of Annual Species Reviews is forthcoming. In the meantime, districts should continue to use the 2001 ROD species list and “Pechman” exemptions.

Survey Protocols and Management Recommendations (including Conservation Assessments, Strategies, and Species Fact Sheets) created previously are still valid, and are unaffected by any of these recent Survey and Manage court rulings.

The 2001 ROD may be viewed at:

<http://www.reo.gov/library/reports/RODjan01.pdf>

The Survey and Manage website may be viewed at:

<http://www.blm.gov/or/plans/surveyandmanage/>

Timeframe: Effective immediately.

Budget Impact: None anticipated.

Background: On December 2009, the District Court for the Western District of Washington issued an order on partial summary judgment in favor of the Plaintiffs finding inadequacies in the NEPA analysis supporting the Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from the Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl (BLM et al. 2007) (2007 ROD). The District Court did not issue a remedy or injunction at that time. The BLM issued interim direction through IM OR-2010-017 in light of the District Court partial summary judgment order.

Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey

and Manage Settlement Agreement adopted by the District Court on July 6, 2011. (the Consent Decree). The BLM issued direction regarding implementation of this settlement agreement through IM OR-2011-063.

The Defendant-Intervenor subsequently appealed the 2011 Settlement Agreement to the Ninth Circuit Court of Appeals. The April 25, 2013 decision ruled in favor of the Defendant-Intervenor and remanded the case back to the District Court. On February 18, 2014, the District Court vacated the 2007 RODs. Vacatur of the 2007 RODs results in returning the BLM to the status quo in existence prior to the 2007 RODs, which includes the use of the “Pechman” exemptions.

Manual/Handbook Sections Affected: The BLM National Environmental Policy Act Handbook H-1790-1.

Coordination: These policies have been coordinated and reviewed by the Deputy State Director of OR930 Division of Resource Planning, Use and Protection; OR931 Forest Resources Branch Chief; OR933 Planning, Science and Resource Information Branch Chief; and District Planning and Environmental Coordinators.

Contact: For NEPA questions, contact Anne Boeder, Planner, at (503) 808-6628; Survey and Manage questions, contact Rob Huff, ISSSSP Conservation Biologist, at (503) 808-6479; Forest Management questions, Dave Roche, O&C Forestry Lead, at (503) 808-6020; and for Fire and Fuels questions, contact Leanne Mruzik, Fuels Management Specialist, at (503) 808-6592.

Districts with Unions are reminded to notify their unions of this instruction memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you with assistance in this matter.

Signed by
Jerome E. Perez
State Director

Authenticated
Rhondalyn J. Darnell
Records Section

Attachment

1 – Projects Developed under the terms of the 2011 Settlement Agreement for Language for Inclusion in NEPA/Decision Documents (1 p)

Distribution

WO210

OR931

OR932

OR933

OR934

OR936

Office of the Regional Solicitor, Portland, Oregon (Brian Perron)

Projects Developed Under the Terms of the 2011 Settlement Agreement for Language for Inclusion in National Environmental Policy Act/Decision Documents

In December 2009, the District Court for the Western District of Washington issued an order on partial summary judgment in favor of the Plaintiffs finding inadequacies in the National Environmental Policy Act (NEPA) analysis supporting the “Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl” (BLM et al. 2007)(2007 ROD). The District Court did not issue a remedy or injunction at that time.

Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement adopted by the District Court on July 6, 2011.

The Defendant-Intervenor subsequently appealed the 2011 Settlement Agreement to the Ninth Circuit Court of Appeals. The April 25, 2013, ruling in favor of the Defendant-Intervener remanded the case back to the District Court.

On February 18, 2014, the District Court vacated the 2007 RODs. Vacatur of the 2007 RODs resulted in returning the BLM to the status quo in existence prior to the 2007 RODs.

The District Court and all parties agreed that projects begun in reliance on the Settlement Agreement should not be halted. The District Court order allowed for the Forest Service (FS) and Bureau of Land Management (BLM) to continue developing and implementing projects that met the 2011 Settlement Agreement exemptions or species list as long as certain criteria were met. These criteria include:

- (1) projects in which any Survey and Manage pre-disturbance survey has been initiated (defined as at least one occurrence of actual in-the-field surveying undertaken according to applicable protocol) in reliance upon the Settlement Agreement on or before April 25, 2013;
- (2) projects, at any stage of project planning, in which any known site (as defined by the 2001 Record of Decision) has been identified and has had known site-management recommendations for that particular species applied to the project in reliance upon the Settlement Agreement on or before April 25, 2013; and
- (3) projects, at any stage of project planning, that the BLM and FS designed to be consistent with one or more of the new exemptions contained in the Settlement Agreement on or before April 25, 2013.

This project is consistent with Criteria X [*1, 2, or 3 above-District to fill out*] because...
[*Districts provide narrative describing rationale*].