I. The Final EIS should provide an analysis and assessment that provides an explanation as to what basis, and how it was determined, that “the BLM plan evaluations found that the BLM has not been achieving the timber harvest levels directed by the existing plans . . .”

As indicated in the DEIS, the DEIS is required as a result of a court ruling and subsequent settlement. This ruling/settlement determined that the dictates of the O&C Act be contrasted with the failure of existing plans to meet timber harvest levels. Presumably, failure of the existing plan to meet timber harvest levels is not in compliance with the O&C Act.

However, as it regards the failure of existing plans to meet timber harvest levels, the DEIS fails to cite source(s) that provide an analysis and assessment that provides even a summary explanation as to why and how “the BLM plan evaluations found that the BLM has not been achieving the timber harvest levels directed by the existing plans . . .” Such an explanation (citing sources and documentation) is imperative in lieu of how this determination lead in the first place to the requirement that a Plan Revision and DEIS be conducted.

Since the DEIS and Appendixes fail to provide an explanation(s) that determined the reason for why “the timber harvest levels directed by the existing plans” were not achieved, the public is left with guessing or assuming said explanation(s).
Due to numerous and varied previous court rulings as it pertains to existing plans, the existing plans were demonstrated to have fallen short of requirements for monitoring and surveys, and related species protections. This no doubt resulted in a decline in timber harvest, but other factors were also at play. Other possible explanations might include lumber market conditions that resulted in a decline in market demand, in part as a result of the impacts of imported lumber, primarily from Canada, itself a part of the globalization of commodity resources, including lumber and other wood products.

Another explanation might include the closure of sawmills in the Pacific Northwest that contributed to a decline in lumber process capacity and thus demand for timber off BLM lands. These closures were not simply the result of a decline in access to public forest lands but were the outcome of larger factors such as competition that has come with globalization.

Why the need for such an explanation/assessment? Because all these factors in combination (and others that might pertain), are needed to explain the decline in timber harvest under the existing plan. Furthermore, should O&C Act timber harvest levels be attained, the Final EIS would have to demonstrate how all these factors are to be addressed and met.

In other words, what drove a decline in timber harvest levels cannot be attributed solely to the “failure” of existing plans in meeting said levels. If other factors were also at play, then they too would need to be addressed. No doubt they are outside the scope of the Plan Revision and DEIS, but for this very reason the outcome in question as it pertains to rising timber harvest levels would also be thrown in doubt. An assessment and determination in this respect seems necessary in order to provide a realistic context in which to determine the potential success and possible shortcomings in raising timber harvest levels as an outcome of the Plan Revision.

In any case, these other potential explanations were not provided (at least in summary form) nor presented and explored in the DEIS and Appendixes. Instead, the public is left with the blanket assertion that “the BLM plan evaluations found that the BLM has not been achieving the
timber harvest levels directed by the existing plans . . . ” While the assertion is not, in itself refutable, failure to provide additional explanations skirts complexities that should be factored in to determine whether the proposed Alternatives provided in the DEIS fully address the reasons for why the failure to meet timber levels in the existing plan will now be meet (or not met, as the case may be).

II. The final EIS should provide analysis and a full explanation to demonstrate that the Plan Revision will meet both O&C Act dictates while also being in compliance with current species recovery plans and the protections contained in critical habitat designations.

As it regards species recovery plans and critical habitat designations: the DEIS fails to provide an explanation of how Alternatives will meet existing plan timber harvest levels while at the same time meeting the requirements of species recovery plans and critical habitat. In failing to do so, the DEIS also fails to provide an analysis, cite studies, data, including field surveys, etc., that provides an assessment for how the proposed Alternatives will meet species recovery plans and requirements of critical habitat. Instead, the public is left with nothing other than the assertion that the Plan will meet both the requirements of the O&C Act and species recovery plans and habitat protections, all without any supporting evidence.

As a result, the DEIS ends up basing its Purpose and Need on nothing other than reaching timber harvest levels, and in doing so fails to address larger contextual issues of relevance and importance to the public. For this reason, the DEIS falls far short in demonstrating how proposed Alternatives would result in reaching (or at least partially reaching), timber harvest levels as set out by the existing plan, while doing so in the larger context of meeting species recovery plans and critical habitat requirements.

III. The Final EIS should fully explain how Plan Revision will meet the O&C Act while also meeting federal laws aimed at species and habitat protection, as “distinct” from those protections afforded in the National Forest Management Act.
The DEIS indicates that the “plan revision is focused on specific legal requirements and intended benefits of the BLM’s unique mandate under the O&C Act, distinct from the mandate to the Forest Service under National Forest Management Act.”

The DEIS fails to provide an explanation as to what is meant by “distinct” within the context as applied here. While the semantic use of “distinct” is not in doubt, the use of the term within the context here leaves the public with the clear impression that the O&C Act takes precedent over National Forest Management Act.

This confusion is further exacerbated when the Purpose and Need indicates that the DEIS and proposed actions will be in compliance with both the O&C Act and federal laws. Apparently, the DEIS intends to meet all federal laws, excluding potentially the NFMA, which will only be meet when the O&C Act’s application is not in conflict with NFMA. No where in the DEIS is an explanation and rationale given as to why the O&C Act should take precedent over that of NFMA. Why is the NFMA singled out? And how can the BLM and the DEIS meet the other federal laws while also not meeting NFMA? Should the BLM choose an Alternative to the existing plan, how can it protect wildlife while at the same time not be in compliance with NFMA?

Furthermore, no where in the DEIS is it explained or a rationale provided as to how the agency will meet both O&C Act and federal policy and regulatory requirements. The DEIS fails to provide any explanation as to what conflicting objectives and goals might exist as a result of attempting to meet both. The DEIS fails to provide any analysis, nor site documents, that provide a determination in how these potentially incompatible goals and objectives will be met, and under what circumstances tensions between the potentially conflicting goals and objectives might be addressed, or what outcomes might result should these potentially conflicting goals and objectives not be meet. Furthermore, this (at least potential) conflict must be placed in both a general context and in specific conditions and locations, as it regards all resources, including but not limited to fisheries, riparian conditions, all ESA listed species and species of critical concern (whether flora or fauna), etc.
Instead, the public is left with nothing other than an assertion that both O&C policy (timber harvest targets), and regulatory goals and objectives as contained in O&C Act and federal laws will be meet. Consequently, the public is not provided with supporting, and site specific (that is, at the Plan Revision level) evidence, relying instead on the assumption that the goals and objectives of both the O&C Act and federal laws will be met.

Consequently, the public is asked to take the DEIS' assertion on face value, without supporting analysis and documentation that addresses the above concerns. In the final analysis -- and this would seem irrefutable -- for the DEIS and final decision to meet both O&C Act and federal law requirements, then any and all Action Alternatives that fail to do this are a priori invalid.

IV. The final EIS should provide the NEPA required “hard” facts to support assertions that the Plan Revision will meet both the O&C Act and federal laws.

In the case of wildlife (flora and fauna), aquatic and riparian protections, etc., the DEIS fails to provide any analysis, nor provide site specific (as defined by Plan Revision level) documentation and analysis, including surveys, monitoring, and assessment, evaluation and (model) validation determinations, that are the basis for the conclusions and estimates as provided, regarding the consequences for each Alternative.

The DEIS is requires that “hard data” be provided in order to meet NEPA requirements.

NEPA is a procedural statute that does not “mandate particular results, but simply provides the necessary process to ensure that federal agencies take a hard look at the environmental consequences of their actions.” *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1070 (9th Cir. 2002).

The Ninth Circuit has also held that it is unacceptable for the agency to rely upon its own expert opinion without hard data and therefore “NEPA requires that the public receive the underlying environmental data” from which an agency expert derived her opinion, *Idaho Sporting Congress v Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998). See also, *marble Mountain Audubon Society v. Rice*, 914 F.2d 179, at 181-2 (9th Cir. 1990).
See also:
Idaho Sporting Congress, Inc. v. Rittenhouse
305 F.3d 957 (9th Cir. 2002)
Idaho Sporting Congress v Alexander
9935847 (9th Cir. 2000)

Again, the DEIS is lacking in that it fails to provide underlying environmental and hard data . . . as required at the Plan Revision level, from which to determine an environmental action decision/analysis that then results in a determination of preferred Alternative. As the Ninth Circuit explained in ISC v Thomas, such an environmental action decision/analysis must meet hard data requirements. While literature cited in the DEIS is informative, and provides needed scientific frame of references, the DEIS does not refer to analysis, applied at the Plan Revision level, that goes beyond that of expert opinion, falling back as it does on broad scale scientific literature cited in the DEIS. Granted, one would not expect the Plan Revision to contain detailed analysis at the project level when that project is, for example, a timber sale. Nonetheless, the Plan Revision must at least reference the documentation in which the analysis is contained that supports conclusions made in the DEIS. Yet this documented analysis is neither summarized or cited.

If the DEIS does not provide a brief summary of that data on which assumptions are based, let alone even reference the documents that contain the data, then the public is left without needed information on which to base its review of the proposed action. The information in question, and not contained in the DEIS, include past monitoring results, analysis, and supporting studies/literature used to determine potential consequences of all Alternatives.

Instead, the DEIS relies on large landscape spatial models. The use of the models, as applied to the area covered by the DEIS, provides little more than descriptions of landscape characteristics, along with very broad scale potential effects/consequences. These modeled descriptions are lacking unless they are used to inform more specific (finer scale) analysis at the Plan Revision level, in determining consequences for implementing the various Alternatives.
The DEIS fails to present analysis of consequences for each Alternative supported by finer scale model applications. Perhaps the models and the resulting descriptions are, by their limitations, limited to broader spatial contexts only.

However, if this is the case, then application of the macro, region-wide, broad scale models, if not reduced in application (at a finer, more site specific scale) to the planning area in question, falls far short in providing the ‘hard’ information to comply with NEPA. Consequently, the DEIS is not valid without the support of Plan Revision level analysis. While the modeled information provided is certainly important and relevant to the public, if this information is not provided along with Plan Revision level data beyond just a description of landscape characteristics, then its relevancy is limited to providing the most generalized description of habitat characteristics and potential consequences.

To repeat, by not providing site specific data at a finer (planning area) scale, the EIS is not in compliance with NEPA. To be certain, in the relative few cases where the DEIS does provide some -- albeit very limited -- descriptions at a finer scale within the planning area, it does so by presumably relying on the studies and literature at a broader scale, but while doing so failing to cite the study, analysis and documentation in which the broader scale model was ‘downsized’ to a finer scale within the planning area. Failure to provide this information (at least a summary in the DEIS and citing of documentation in the planning record), is not in compliance with NEPA.

Use of site specific models should also include assessment, evaluation and validation determinations to indicate the usefulness and credibility of models used, as a result of monitoring. Of course, such information is nonexistent since Plan Revision level data and models, including those used for sediment, woody debris, fire protection, etc., are not applied, or if they are, the DEIS does not cite any reference to documentation in which the data is contained. Consequently, while the DEIS is meeting public involvement aspects of NEPA, it is not meeting the “hard” data requirements of NEPA.
V. The Final EIS should explain how Plan Revision will meet the Northwest Forest Plan aquatic conservation strategy.

The Plan Revision DEIS is in error because the proposed action alternatives fails to comply with the Northwest Plan aquatic conservation strategy. The Northwest Plan aquatic conservation strategy and PACFISH Riparian Management Objectives are important to land managers and the public because they are considered to be the best watershed scale information available, and provide the criteria against which attainment or progress toward attainment of the riparian goals is measured.

Actions that reduce habitat quality are inconsistent with the purpose of the aquatic conservation strategy. The RMOs provide "criteria for riparian areas and fish habitat that are good indicators of ecosystem health, are quantifiable, and are subject to accurate and repeatable measurements." "Without the benchmarks provided by measurable RMOs habitat suffers a continual erosion."

The DEIS fails to demonstrate that the action Alternatives will be in compliance with the aquatic conservation strategy. For instance, while the DEIS relies on a large wood model, no where in the DIES is it indicated where this model was used at a finer scale . . . within the Plan Revision area. The same can be said for fish productivity (chapter 4, page 733): results of a model are presented but the model reflects a broad landscape/watershed scale whose applicability to the planning area is not presented. The DEIS never gets around to providing summary data or cite documentation (in the planning record) containing more detailed data on which the DEIS draws its assessments and conclusions. Consequently, since the DEIS does not cite documentation supporting conclusions at the Plan Revision level, the public is then left with no document available in the planning record for verification of DEIS assertions/conclusions.

As for fish/water, the DEIS is, again, not in compliance with NEPA as it regards documentation. For instance, in chapter 3, page 337, table 106 is presented (for which no source/document is cited) to indicate major risk factors for ESA listed fish. Yet no where in the DEIS is any evidence
presented, analysis cited, or summary data provided that indicates the degree to which these risk factors are present in the Plan Revision area and the consequences as a result Plan Revision implementation.

In conclusion, the DEIS is littered with claims, assertions, conclusions, etc., for which no documentation containing hard data is presented or cited as available in the planning record. While the DEIS provides valuable broad scale information, without Plan Revision level summary analysis, cited documentation of studies, monitoring results, fish surveys, evaluations and assessments, etc., the DEIS comes across more as a college level text book than does it constitute a valid EIS.

VI. The final EIS must demonstrate that the protection for all species -- as listed under the ESA, and as it concerns ESA listed species recovery plans and critical habitat designations -- within the area covered by the Plan Revision and the DEIS are in compliance with protections at the designated population levels.

The ESA listed species designated population area, and thus species recovery area and related critical habitat, cover an area that far exceeds that of the Plan Revision and DEIS. Consequently, the Plan Revision and DEIS must be consistent and compatible with the all biological opinions that pertain to ESA listed species and their designated populations, their recovery plans and critical habitat designations. Anything else would be in violation of the law. There is simply no way in which the area encompassed by the Plan Revision and DEIS can be abstracted from the larger area in question, and management practices be applied that fail to be consistent with, and in compliance with, the larger area as reflected in the listed species designated population area, and their respected biological opinions. Failure to do so risks future jeopardy calls for listed species in the designated population area as a whole, assuming practices of the Plan Revision present risks to listed species viability, including issues surrounding connectivity, refugee, etc.

In addition, it should be noted that the final EIS and Decision would first require the completion of consultation with regulatory agencies as it regards ESA listed species. A Decision without completion of biological opinions would place in doubt any effects determination for all action Alternatives.
VII. Final comments:

It would appear, beyond a doubt, that the DEIS is biased towards meeting O&C Act, even if in doing so it comes at the expense of protections offered by federal laws, such as the CWA, ESA, NFMA, etc. The mechanics that drove the court ruling in question that lead to the Plan Revision and DEIS and the subsequent settlement, seem to have been born in, and motivate by, decisions that came out of Washington DC. This is most unfortunate, and it is regrettable that the BLM is compelled to pursue a Revision that ultimately will not see the light of day and will have been a terrible loss of resources and staff time, which could have been devoted to much more credible and crucial pursuits.

In the end, how can anyone not come away with the conclusion that the Revision in essence boils down to a conflict over state vs. federal rights. If this is in fact the case, then it would seem safe to assume that the later will prevail, should the Plan Revision and DEIS ultimately be determined in court, which also seems inevitable. Should this be the outcome, it may not be too far fetched to say that those who have pushed for the Plan Revision will one day regret what they have wished for.

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cc.
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