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# COQUILLE INDIAN TRIBE

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January 9, 2008

Ed Shepard, State Director OR/WA.  
Bureau of Land Management  
P.O. Box 2965  
Portland, Oregon 97208

Re: Western Oregon Plan Revision EIS comments

Mr. Shepard,

The Coquille Indian Tribe (the "Tribe") appreciates the opportunity to participate in the Western Oregon Plan Revision (WOPR) process. This is truly the most intensive environmental analysis that has been undertaken by a federal agency in the Pacific Northwest; we applaud the BLM's efforts. We have reviewed the WOPR draft EIS and provide the following comments:

**BACKGROUND:**

The Tribe manages 5,410 acres of forest land, the "Coquille Forest", within the WOPR planning area. Congress transferred the Coquille Forest to the Tribe to be held in trust by the Assistant Secretary of the Interior (P.L. 101-42) (The "Coquille Forest Act"). In the Coquille Forest Act, Congress requires the Secretary of the Interior to manage these forest lands subject to the standards and guidelines of plans of nearby or adjacent federal lands. The most "nearby" and adjacent Federal forest lands are Coos Bay District BLM O&C lands subject to this WOPR process. Therefore, federal law places the BLM in a position to establish the minimum standards and guidelines for management of the Coquille Forest. Because the management of the Coquille Forest has great bearing on the Tribe's Self-Sufficiency, the WOPR process, by definition involves a great degree of control over the use and management of this trust asset and the welfare of Coquille Tribal members.

It is well-established that the Department of Interior must act in the best interest of tribes when developing or administering management plans that effect trust assets. This U.S. Supreme Court has indisputably established this trust obligation, specifically in the

context of the management of Indian forest lands. United States v. Mitchell, 463 U.S. 206, 224 (1983) (commonly referred to as "Mitchell II"). This forestland trust obligation extends to the WOPR process and its resulting management plan. Establishment of a Tribal Cooperative Management Area (TCMA) as proposed by the Tribe is the means by which BLM may satisfy this obligation in this context.

#### **CHAPTER 1—PURPOSE AND NEED**

PP. 3-7—The purpose and need for the plan revisions should be revised to include a brief discussion about the Department of the Interior's trust obligation to Tribal forestlands as well as a background on the unique management requirements for the Coquille Forest Lands. The discussion described here is necessary to establish the "need" for analyzing the TCMA management direction on federal lands in this DEIS. The discussion on the top of page 20 could be re-worded slightly to include this necessary legal background.

#### **CHAPTER 2—ALTERNATIVES**

Although none of the alternatives completely meet all of the needs of the Tribe, the Alternative 2, most closely fits the Tribal forest management goals, while providing the economic benefits to the Counties, and protections for the environment.

In light of the Supreme Court's decision in Natl. Ass'n of Homebuilders v. Defenders of Wildlife, 127 S. Ct. 2518, 168 L.Ed.2d 467 (June 25, 2007), we believe that BLM must first establish and define the non-discretionary duties mandated by the O&C Act. Only after completion of that process should the document determine what discretion is permissible under Federal environmental laws. This evaluation is imperative because the O&C Act itself constitutes the very motivation for this WOPR planning process. The document must expressly state what the requirements of the O&C Act are, whether the selected alternative(s) comply with that Act, and why or why not the alternative deviates from the O&C Act requirements. We assert that, if the O&C Act is the dominant use act, the alternative must yield to it. If you determine that the O&C Act is not the dominate use act, the document should include your analysis to reach this conclusion, including citations to relevant legal sources.

PP. 84 --- The TCMA area should be better defined. The number of acres is not arbitrary, the proposed 15,000 acres represent those BLM lands that are both within 1/2 mile of tribal lands and within shared watersheds.

### CHAPTER 3— AFFECTED ENVIRONMENT

**Map 16 (pg. 165) —** This map is hard to read; this should be a colored map that shows the TCMA area (BLM lands), the Tribal lands, and shared watershed boundaries.

### CHAPTER 4—ENVIRONMENTAL CONSEQUENCES

#### *Spotted Owls and Marbled Murrelets*

The use of suitable habitat to assess affects on Northern Spotted Owls (NSO) and Marbled Murrelets (MAMU) is confusing to the reader. There are no clear definitions of suitable habitat for these species in the document. The definition on page 868 is vague, and needs refinement. We suggest defining suitable habitat based on individual species needs.

Although page 637 states: “[e]ffects to populations were not analyzed because population size is affected by numerous factors other than habitat”, the way that the analysis is written makes the reader assume that changes in habitat are synonymous with changes in population. This statement needs clarification.

The differences between suitable habitat and critical habitat should be made clearer. In addition, further clarification as to why suitable habitat was used to analyze effects to NSO and MAMU as opposed to population is needed. Is there population data that can be assessed? This document never addresses current occupancy by NSO and MAMU on BLM lands.

Does the establishment of LSMA’s for maintaining MAMU and NSO habitat, conflict with the O&C Act?

If LSMAs are created in areas where occupancy has not been determined, then the establishment of these areas would be arbitrary and capricious. These areas would not meet the O&C act, nor would these areas fall under the BLM’s mandate under Section 7 of the ESA..

*“insure that any action authorized, funded, or carried out” by the agency “is not likely to jeopardize the continued existence of any endangered species . . . or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2).*

Without appropriate surveys to verify occupancy, there is not enough scientific evidence to support the development of LSMAs. According to the 9<sup>th</sup> Circuit Court of Appeals case Oregon Natural Resources v. Allen, No. 05-8350 (July 28, 2006), habitat cannot be used as a surrogate for Jeopardy; there must be a numerical measurement for take.

## ADDITIONAL COMMENTS

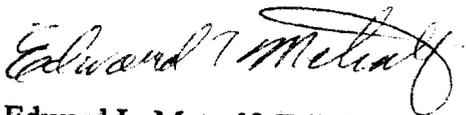
In order to meet the O&C act in LSMA areas, the BLM might want to consider a more intensive management strategy in these areas.

Although the NEPA process requires a federal agency to analyze the worse case scenario, it might be important for the BLM to point out that the economic and environmental effects in this analysis have been overstated to reflect the worse case, and that it would take some period before these effects would be seen, if at all.

Under the current Northwest Forest Plan, the BLM and other agencies managing federal lands with the range of the Northern Spotted Owl are required to conduct monitoring of the effects of implementation of the Plan's Standards and Guidelines. One element of monitoring identified in the Record of Decision for the Plan is "American Indians and Their Culture" (ROD Implementation E-9). Effectiveness monitoring under the Plan is to take place at 10-year intervals. The results of the tribal monitoring component for the first 10-year period were completed in 2003 and published as: "Northwest Forest Plan - The First Ten Years (1994-2003) Effectiveness of the Federal-Tribal Relationship" (R6-RPM-TP-02-2006). This important tribal monitoring component needs to be incorporated into the monitoring strategy of the WOPR and subsequent management plans.

Thank you for the opportunity to provide comments to the BLM regarding the Western Oregon Plan Revision Draft Environmental Impact Statement.

Sincerely,



Edward L. Metcalf, Tribal Council Chairman  
Coquille Indian Tribe

CC: Dick Prather  
Western Oregon Plan Revisions  
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