



# National Center for Conservation Science & Policy

84 4<sup>th</sup> Street  
Ashland, OR 97520  
(541) 482-4459  
(541) 482-7282 (fax)

December 8, 2008

Brenda Hudgens-Williams  
Western Oregon Plans Revisions  
P.O. Box 66538  
Washington, DC 20035

RE: Administrative Protest of the Final Environmental Impact Statement for the Revision of the Resource Management Plans of the Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford, and the Klamath Falls Resource Area of the Lakeview District; Amendment. (EIS) No. 20080416

My name is Richard S. Nauman, I represent the National Center for Conservation Science and Policy, and I am protesting the Final Environmental Impact Statement for the Revision of the Resource Management Plans of the Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford, and the Klamath Falls Resource Area of the Lakeview District; Amendment (WOPR) pursuant to 43 C.F.R. § 5003. You will find my name, address and telephone number at the conclusion of this document. This protest is timely because the notice advertising the WOPR was published in Federal Register on November 7, 2006. I commented on the WOPR in a timely and substantive manner on January 11, 2008.

This protest reiterates many of the concerns we had when we commented on the WOPR. Our organization has participated at all stages of the NEPA process including co-hosting a forum on vegetation modeling with the BLM and participating in a public forum with the BLM's Medford Area Manager. Our members have a strong interest in public lands management and forest conservation. Our staff has been heavily involved with the Recovery Planning effort for the Northern Spotted Owl. I regularly visit and use BLM lands in Western Oregon including hiking, boating, hunting, and fishing on the Medford District.

Many of our concerns are shared by the Environmental Protection Agency, National Marine Fisheries Service, the Oregon Chapter of the American Fisheries Society, the WOPR Science Review Team, and the scientific reviewers of the Draft and Final Recovery Plans and Critical Habitat Designation for the Northern Spotted Owl. We incorporate by reference comments on the DEIS, FEIS, and owl plans and habitat designation by these groups. These documents are included with our protest either as paper copies or electronic on the enclosed CD.

The EPA is clear that the WOPR PRMPs significantly reduce protection for watersheds providing drinking water and conserving salmon (EPA letter to BLM dated November 25, 2008) stating:

“In particular, we are concerned that the PRMP still represents a significant reduction in the level of aquatic protection currently provided on BLM lands, including protection for

*Creating science-based solutions to protect and restore the life processes and ecological vitality that sustain all lands, waters, and communities.*



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watersheds that provide drinking water to over one million Oregonians and key watersheds for salmon conservation.”

and

“We believe that the proposed reduction of protection for riparian areas, landslide prone areas, and key watersheds has implications for water quality and sensitive beneficial uses, such as municipal water supply and salmonid spawning and rearing. While the PRMP is an improvement over the preferred alternative in the Draft EIS, our independent analysis leads us to believe that the analysis used in the WOPR overestimates the ability of the PRMP to fully meet shade goals and stream temperature water quality standards.”

We are concerned that the science documents that purportedly underlie the WOPR analysis were made available late in the process or not at all. On November 7, 2008 when we tried to access the Aquatic Habitat Management Strategies State-of-the-Science report the link on the BLM webpage<sup>1</sup> led to a page that said:

“Much of this material (modeling) is being used directly in WOPR DEIS. Principle Investigators are also producing a summary whitepaper and synthesis manuscript”

When checked on December 8, 2008 the link lead to a brief uninformative abstract that says “To be posted in full April, 2008”. This abstract is identical to one posted at the link when we attempted to access the document in early October 2008.

On December 8, 2008 we attempted to access the Application of Landscape Dynamics Concepts State-of-the-Science report we found the statement “Draft is still in review status”.

These two documents provide much of the foundation of the WOPR analysis particularly the fish and water sections. Because of the key roll of these documents the BLM must refrain from issuing Final PRMPs until the public has been allow to see these documents and comment on their relationship to the analysis and RMPs.

We are also concerned that much of the effects analysis relies on assertions by the BLM rather than a careful consideration of relevant science and appropriate data. In the FEIS the BLM makes assertions regarding the effectiveness of Best Management Practices to prevent degradation of aquatic habitats and water quality and the effectiveness of the TPCC withdrawn designation to prevent increased landslide hazard. Rather than compare the Northwest Forest Plan (the No Action Alternative) to the PRMPs and other action alternative in a meaningful way the FEIS relies on assertion - a clear vilation of the National Environmental Policy Act.

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<sup>1</sup> [http://www.blm.gov/or/plans/wopr/science\\_spring\\_2008.php](http://www.blm.gov/or/plans/wopr/science_spring_2008.php)



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We note that a recent court case emphasized:

“An agency’s review is arbitrary and capricious if it fails to consider important aspects of the issues before it, if it supports its decisions with explanations contrary to the evidence, or if its decision is either inherently implausible or contrary to governing law. The Lands Council v. Powell, 395 F.3d 1019, 1026 (9th Cir. 2005).”<sup>2</sup>

Given that we have documented the fact that the WOPR FEIS fails to consider important aspects of the issues before it and that the results of the analysis are inherently implausible – large increases in old forest logging in heavily degraded watersheds will result in no change to water quality or habitats for species associated with these lands or significant cumulative impacts – we believe that the WOPR does not meet the minimum standards of NEPA and a supplemental EIS should be written.

This protest is not exhaustive. Given the short time available for our staff to review and comment on the document we are unable to provide details of all issues with the FEIS and PRMPs nor are we able to document all of our substantive DEIS comments that the BLM failed to address in the FEIS.

The FEIS fails to consider climate change in any meaningful way as requested in our DEIS comments, wrongly applies the BLM’s extreme interpretation of the O&C Act to Public Domain lands governed by FLPMA, and fails to consider non-timber requirements of the O&C Act including the provisions for recreation that will be impacted by implementation of the PRMPs.

Sincerely,

Richard S. Nauman  
Conservation Scientist

Attachments:

NCCSP comments on the WOPR Draft DEIS

Dr. Katie Dugger comments on Draft Northern Spotted Owl Recovery Plan

The Wildlife Society comments on the Final Northern Spotted Owl Recovery Plan

AOU/SCB Comments on the Final Northern Spotted Owl Recovery Plan

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<sup>2</sup> <http://www.sierraforestlegacy.org/Resources/Conservation/LawsPoliciesRegulation/KeyForestServicePolicy/FrameworkRevisions/FrameworkRevision-JudgeEnglandDecision8-01-08.pdf>



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Carroll C and Johnson DS. 2008. The importance of being spatial (and reserved):

Assessing northern spotted owl habitat relationships with hierarchical Bayesian models.

Conservation Biology 22: 1026-1036.

EPA letter to BLM dated November 25, 2008

OR AFS WOPR DEIS Comments

Enclosed CD – We provided a CD with an extensive library of scientific publications and reviews with our DEIS comments. We are including an additional copy of this disk with our protest. We include on this disk these publications mentioned in our protest:

Clark DA. 2007. Demography and Habitat Selection of Northern Spotted Owls in Post-Fire Landscapes of Southwestern Oregon. MS Thesis. 202 pp.

Staus N. 2007. An analysis of the WOPR alternatives using a decision support model.

## **DESCRIPTION OF THE PLAN AMENDMENTS**

The WOPR PRMP covers approximately 2.6 million acres BLM land, within a planning area of approximately 22 million acres in western Oregon. Resource Management Plans define the management direction for individual BLM districts or BLM resource areas. The WOPR FEIS describes a PRMP for five districts (Coos Bay, Eugene, Medford, Roseburg, Salem) and a portion of a sixth (the Klamath Falls Resource Area of the Lakeview). The PRMP would significantly increase destructive logging, road construction and off-road vehicle use in forests administered by BLM in western Oregon. Riparian reserves would be cut in half threatening streams and rivers, older forests throughout western Oregon would be at-risk and over 70% of the timber volume would come from clearcuts where no green trees would be retained.

The notice for the PRMP was originally published in the Federal Register on October 17, 2008 [73 FR 61905] announcing that no protest period was allowed. The Federal Register then announced on November 7, 2008 that a protest period was allowed. This was confusing to me and other interested parties as the materials and newsletters leading up to the FEIS stated that a protest period would be allowed (then the FEIS asserted that no protest period was allowed) and now the BLM reversed itself again. The BLM should reissue the FEIS or extend the protest period to avoid any confusion over this important part of the public process, a process that will decide the fate of these 2.6 million acres.

## **PORTIONS OF THE PLAN AMENDMENT BEING PROTESTED**

All of the portions of the Final Environmental Impact Statement for the Revision of the Resource Management Plans of the Western Oregon Bureau of Land Management Districts of Salem, Eugene, Roseburg, Coos Bay, and Medford, and the Klamath Falls Resource Area of the Lakeview District; Amendment are being protested.

## **CONCISE STATEMENT OF PLAN VIOLATIONS**

The adoption the proposed plan would violate the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, the Federal Land Policy and Management Act, and the Oregon and California Lands Act. Because of time constraints placed on the protest process our protest focuses on violations of NEPA and the ESA. However, BLM should consider our protest in light of all applicable laws.

## **STATEMENT OF REASONS**

I am protesting the WOPR FEIS PRMP for the following reasons:

### ***The FIES Fails to Comply with the National Environmental Policy Act***

The WOPR FEIS and PRMP fail to comply with the National Environmental Policy Act.

- The FEIS fails to consider a range of alternatives
- The FEIS does not clearly state the proposed actions
- The FEIS fails to document the affected environment
- The FEIS fails to analyze many actions in the PRMP
- The FEIS does not differentiate between the alternatives
- The FEIS fails to respond to substantive comments on the DEIS
- The FEIS fails to use a consistent process for analyzing the alternatives
- Changes to the alternatives after the analysis was conducted have biased the results

- Estimates of Riparian Reserves do not agree with S&M NEPA documents
- Issues Related to the Survey and Manage Standards and Guidelines
- The FEIS does not consider the effects of the proposed actions on many rare and sensitive species

### **1.) The FEIS fails to consider a range of alternatives**

The FEIS fails to consider a reasonable range of alternatives including alternatives suggested in our comments on the DEIS. A recent court decision emphasized the importance of a range of alternatives:

“NEPA does require that federal agencies like the Forest Service herein “produce an EIS that rigorously explores and objectively evaluates all reasonable alternatives so that the agency can sharply define the issues and provide a clear basis for choice among options by the decision maker and the public to consider alternatives to the proposed action.” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002) (citing 40 C.F.R. § 1502.14). As the Ninth Circuit explained, “NEPA regulations describe this alternatives requirement as the ‘heart’ of the EIS.” *Id.* An EIS is inadequate for purposes of NEPA if it fails to address “[t]he existence of a viable but unexamined alternative.” *Natural Res. Def. Council*, 421 F.3d at 813.”<sup>3</sup>

In our comments on the DEIS we specifically stated that an alternative giving a great level of protection to older forest associated species be considered:

“We recommend that the Final EIS consider an alternative or alternatives that provide a greater level of protection for the Northern spotted owl and other species associated with older forests. The Northern spotted owl continues to decline and the further loss of habitat will only further limit future options for recovering the species.”

With our DEIS comments we provided a manuscript Staus (2007) that provided an alternative created using an Ecosystem Management Support System and requested that it be considered. No mention of the manuscript is made in the FEIS “Reply to Comments” section or “Alternatives Considered but Eliminated Section”

The FEIS eliminated several important alternatives that were partially analyzed in the DEIS (Subalternatives 1, 2, and 3 of Alternative 1). The FEIS states:

“These examinations [of the subalternatives] provided the responsible official with information that was useful in more fully understanding the alternatives to inform the selection of a proposed RMP for the Final EIS.” (FEIS 2-166)

Because analysis of these alternatives provided information used in selecting a PRMP it must be disclosed in the Final EIS. In our DEIS comments we pointed out that a full analysis is required for all alternatives. If these alternatives were considered in the selection of a PRMP a complete analysis

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<sup>3</sup><http://www.sierraforestlegacy.org/Resources/Conservation/LawsPoliciesRegulation/KeyForestServicePolicy/FrameworkRevisions/FrameworkRevision-JudgeEnglandDecision8-01-08.pdf>

for all resources is necessary. The BLM should conduct a full analysis of these alternatives and disclose them in a supplemental EIS.

In the FEIS several viable alternatives are dismissed because the alternative does not conform to the BLM's interpretation of the O&C Act or would require an act of congress. However, the Council on Environmental Quality's document Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations states:

“An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable...”

and

“Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies.”

Futhermore, the BLM unreasonably restricted the range of alternatives by entering into a settlement agreement that states “...all plan revisions shall be consistent with the O&C Act as interpreted by the 9th Circuit Court of Appeals.” and adopting the timber industry's interpretation of the O&C Act and the 9th Circuit Court ruling. By agreeing to limit the range of alternatives before initiating the environmental analysis process, the BLM has violated NEPA.

The FEIS is also flawed because it only provides a single alternative for many of the actions contained in the document including grazing and OHV management. The analysis is flawed because decision maker has no range of effects for these activities to use as a basis to make a reasoned decision.

The BLM should issue a Supplemental EIS that considers a full range of alternatives to provide a reasonable basis for the selecting land management plans. These alternatives should include a broad range of all viable alternatives as suggested in scoping and comments on the DEIS. Alternatives dismissed from the analysis because they do not fit BLM's current interpretation of the O&C Act or would require congressional action should be considered.

In particular, a conservation alternative similar to the one we provided in our DEIS comments (Staus 2007) that provides a greater level of protection for older forest associated species, aquatic species, and water quality be considered. Thinning overstocked plantations could represent a significant source of timber under this alternative and restoration could provide an important source of community stability as required by the O&C Act.

## **2.) The FEIS does not clearly state proposed actions**

The FEIS provides no information regarding the No Action Alternative in the section describing the alternatives. In response to our DEIS comments on this issue the BLM asserts that a reference to the five existing RMPs is sufficient documentation of the No Action Alternative. We believe that this issue is critical as a summary of the No Action Alternative is the basis for comparison among the alternatives.

The failure to provide at least a summary of current management has led to the failure of the analysis to consider the full effects on eliminating the Northwest Forest Plan on BLM lands in Western Oregon.

The FEIS is unclear on how lands classified as Administratively Withdrawn TPCC landslide-prone areas will be managed. The FEIS response to comment #232 states

“The BLM Timber Productivity Capability Classification identifies susceptible landforms to mass wasting, and these lands have been withdrawn from management activity (see Chapter 3, Water section).”

However the FEIS on page 2-27 states:

“Areas identified as withdrawn from the harvest land base through the timber production capability classification system do not have specific management objectives or management directions. They may be managed similarly to the adjacent or surrounding land use allocations...”

Although TPCC withdrawn lands are classified in the “non-harvest” land base through out the FEIS it appears from this statement that TPCC withdrawn lands in the TMAs may be subject to the same intensive management practices as the surrounding areas.

We specifically asked about this issue in our comments on the DEIS:

“Will timber harvest, road building, or other activity occur on lands identified as unstable in the TPCC system? The EIS must consider and disclose the impacts of these activities especially as they relate to the frequency, scale, consequences, and other impacts to resources.”

We provided other questions regarding the role of TPCC withdrawn lands, landslides, and the potential effects of the proposed alternatives in our DEIS comments which the FEIS fails to respond to. The BLM should provide a supplemental FEIS that clarifies this issue and provides an analysis that examines the effects of removing riparian reserves from unstable areas.

### **3.) The FEIS fails to document the affected environment**

The FEIS violates NEPA because chapter 3, the Affected Environment, is lacking basic information needed to make a meaningful comparison of the alternatives. For many resources there is no information regarding the current conditions. Much of chapter 3 is an argument for the selected analysis methods, conclusions, and selected alternative. Specific examples include:

The Stream Flow section of Chapter 3 (FEIS Page 3-390) provides no information regarding the current condition of stream flows. The final sentence of the section does refer to the Chapter 3 water section. We assume that this refers to two maps that display fifth-field watersheds where more than 40% of the watershed has been recently clearcut.

We find the stream temperature section of Chapter 3 to be lacking a description of the affected environment. Rather than describe the current condition of the affected environment the Stream

Temperature section of chapter 3 (FIES Pages 3-337 to 3-339), provides a lengthy argument for the riparian buffer widths chosen in the FEIS. The National Marine Fisheries Service also noted this section as a problem in their DEIS comments and the FEIS fails to correct this NEPA violation.

Little information on the affected environment is presented for riparian microclimate. FEIS Page 3-339 is an argument that thinning will have no effect on riparian microclimate but does not present information on the current condition.

On FEIS Page 3-341 the last paragraph of the Temperature section says that there is a high confidence that 80% effective shade “goals” are being met on more than 90% of the riparian management areas. It is unclear what is meant by this statement. What is the “goal” and how was it determined that there is a high level of confidence? Assertions by agency personnel with out supporting data are insufficient for NEPA analysis.

The long section in chapter 3 on landslides provides much background but little affected environment. The section is an argument for the idea that forest roads are built better than in the past. No description of the current conditions is presented.

The last sentence of nutrient input section FEIS Page 3-385 is the entire affected environment information for this issue.

FEIS Page 3-341 Dissolved Oxygen and Bacteria sections provide no affected environment information.

The heavy metals section on FEIS Page 3-352 provides no affected environment information.

The FEIS fails to use the extensive data on the current fish populations and habitats available from surveys conducted by the Oregon Department of Fish and Wildlife, BLM, USFS, and other agencies. The FEIS fails to consider the extensive datasets on fish and fish habitats collected as part of Northwest Forest Plan monitoring. We specifically recommended using data sources such as these in our comments on the DEIS.

These represent selected examples of the failure of the FEIS to adequately document the current condition of the resources in the plan area.

#### **4.) The FEIS fails to analyze many actions in PRMP**

The FEIS fails to analyze many actions proposed in the PRMPS including:

- Elimination of Northwest Forest Plan
- Off Highway Vehicles
- Logging in LSMAs and RMAs
- Administratively Withdrawn
- Grazing
- Post-Fire Logging

#### **Elimination of the Northwest Forest Plan**

The FEIS fails to consider the elimination of the Northwest Forest Plan. In our DEIS comments we specifically requested that

“The EIS should consider and disclose the direct, indirect, and cumulative impacts of the elimination of the Northwest Forest Plan on resources on BLM lands, other federal lands including USFS lands, state, and other non-federal lands including privately owned lands.”

Specific examples of provisions eliminated by the PRMP include but are not limited to:

- Coordinated management of UFSF and BLM lands
- Regional Ecosystem Office oversight of activities in LSRs
- LSR assessments
- The watershed analysis process
- Coordinated terrestrial, riparian and watershed monitoring
- Managed Late-Successional Areas
- Adaptive Management Areas
- Riparian Reserves in unstable and potentially unstable areas
- Key watersheds and other aspects of the Aquatic Conservation Strategy
- Matrix Standards and Guidelines
- Survey and Manage Standards and Guidelines

### **Off Highway Vehicles**

The FEIS fails to analyze the effects of OHVs on resources.

### **Logging in LSMAs and RMAs**

The FEIS fails to consider and disclose the effects of logging in LSMAs and RMAs for yarding, road building, and other reasons permitted in the PRMP.

According to the FEIS:

“Trees would be felled and removed as needed for safety or operational reasons, including but not limited to: danger tree removal, creation of yarding corridors adjacent to nearby harvest units, and road construction or maintenance.”

### **Administratively Withdrawn**

The FEIS fails to consider and disclose the effects of management activities on lands Administratively Withdrawn because of TPCC classification for unstable areas. See our discussion of this issue in the section above labeled “2.) The FEIS does not clearly state the proposed actions” on page 4 for more information related to this issue.

### **Grazing**

We specifically requested in our comments on the DEIS that the FEIS consider and disclose the effects of grazing and other activities on water quality in the Klamath Basin, particularly Upper Klamath Lake, and the effects of these activities on Lost River and shortnose suckers. The FEIS does not analyze and disclose the effects of the proposed grazing and grazing related activities under the PRMP.

## **Post-Fire Logging**

The FEIS fails to consider our comment on post-fire logging:

“The DEIS fails to consider the effects of post-fire logging and other forms of “salvage” on terrestrial habitats and species. Many studies have documented widespread impacts of post-fire logging on ecosystem processes and habitat structures (e.g., see Beschta et al. 2004, Lindenmayer et al. 2004, Noss and Lindenmayer 2006, Donato et al. 2006, Thompson and Spies 2007). In general, post-fire logging impacts are known to: (1) remove biological “legacies” important in restoring forest function after natural disturbances; (2) compact soils that can magnify erosion problems with impacts to streams; (3) compound the initial disturbance; (4) spread weeds; (5) increase mortality of conifer seedlings; and (6) elevate fire hazard due to excessive build up of logging slash. Additionally, Clark (2007) documented significant impacts to the northern spotted owl following post-fire clearcutting in burn areas in southwest Oregon. Based on these findings, Clark (2007) recommended no harvest within 1.5 km of owl activity sites following natural disturbances. In sum, not a single study has documented ecosystem benefits from post-fire logging, yet BLM would permit post-fire logging in the LSMAs following disturbance that is likely to further impact threatened species, degrade water quality, inhibit forest establishment, and elevate fire risks. The impacts of post-fire logging in light of this research need to be fully addressed in the DEIS, including how much incidental “take” post-fire logging in the LSMAs could trigger.”

The FEIS does not disclose the effects of post-fire logging and other forms of “salvage”. These actions have significant effects especially in LSMAs, RMAs, and Deferred Timber Management Areas under the PRMP.

## **5.) The FEIS analysis does not differentiate between alternatives**

The analysis lacks sufficient resolution to differentiate between alternatives. For many resources the outcome of the analysis for each alternative is so similar that it provides little for the decision maker to base the decision on.

## **6.) The FEIS fails to respond to comments on the DEIS**

The FEIS fails to respond to many of our comments on the DEIS. In a letter to the BLM dated November 25, 2008, the Environmental Protection Agency shares our view that the BLM has failed to respond to comments on the DEIS:

“We also appreciate the limits that a constrained EIS schedule placed on BLM’s flexibility in accommodating the full range of input from cooperating agencies and the public.”

The following examples detail some examples of comments that the BLM fails to respond to in the FEIS. Other examples are included in other sections of our protest. Due to the short time frame available for preparing the protest we are unable to include an exhaustive list. Other examples occur elsewhere in this document.

### **Riparian Reserves on Unstable Slopes**

Our comments on the DEIS included:

“What is the effect of the elimination of Riparian Reserves on unstable and potentially unstable lands?”

The FEIS fails to address this issue. The BLM’s response is limited:

“The BLM Timber Productivity Capability Classification identifies susceptible landforms to mass wasting, and these lands have been withdrawn from management activity (see *Chapter 3*, Water section).” (Comment #232 in FEIS)

However FEIS Page 2-27 states:

“Areas identified as withdrawn from the harvest land base through the timber production capability classification system do not have specific management objectives or management directions. They may be managed similarly to the adjacent or surrounding land use allocations...”

The FEIS violates NEPA because it fails to respond adequately to our substantive comments regarding this issue. Reliance on assertions by agency staff is not sufficient for NEPA analysis.

### **Alternatives**

The FEIS fails to consider the manuscript by Staus (2007) that was included with our comments. An electronic search of the FEIS for Staus did not find any reference to this manuscript.

### **Lost River and Shortnose Suckers**

The FEIS fails to address our comment:

“The EIS should discuss the affects of all proposed activities on lake water quality, spawning habitat condition and the impacts on the species [Lost River and shortnose suckers]. In particular, the grazing program on the Klamath RA may contribute to water quality problems in occupied sucker habitat. The recovery plan specifically mentions the role of grazing in the deterioration of water quality in the Klamath Basin: “Grazing practices have led to severe degradation of the riparian areas and have therefore greatly increased the nutrient and sediment export potential...”

The FEIS fails to address our comment regarding the apparent conflict between this passage on DEIS Page 743 and the Gerber-Willow Valley Watershed Analysis:

“Even though there would be short-term (less than one year), localized increases in fine sediment delivery from culvert, grazing, and other management activities under all four alternatives, there would be less than a 1% increase in fine sediment compared to existing rates from road-related activities, which often accounts for the majority of sediment that is delivered to stream channels. See the *Water* section in this chapter.” (DEIS PAGE 743)”

The Gerber – Willow Valley Watershed Analysis (USDI and USDA 2003) provides specific sources and rates of sediment production in the area and states:

“In addition to roads, erosion from uplands and stream banks are significant sources of sediment.”

### **Use of Proprietary Models**

The FEIS fails to consider our comment on the use of the proprietary OPTIONS model.

“The DEIS analysis relies on proprietary software (OPTIONS ). Documentation and the software are not readily available to the public. Proprietary data that are unavailable to the public for review may not be incorporated by reference in NEPA documents (40CFR 1502.21). The EIS should choose a modeling system and method that is well documented, available, transparent, and has been subject to peer review and publication in peer-reviewed journals.

An example of a successful program that was developed by federal agencies, is available to the public, incorporates fire, wind and other stochastic disturbance, and would provide a suitable, tested, and documented alternative to the OPTIONS model is Landis-II. We recommend that the BLM consider using this model for the WOPR EIS analysis. For more information see:

Scheller RM, Domingo JB, Sturtevant BR, Williams JS, Rudy A, Gustafson EJ, Mladenoff DJ. 2007. Design, development, and application of LANDIS-II, a spatial landscape simulation model with flexible temporal and spatial resolution. *Ecological modelling* 201:409–419.

and the web site: <http://www.landis-ii.org/> ”

### **Publications that we provided**

We provided a number of scientific publications on specific topics relevant to the WOPR analysis with our comments on the DEIS.

None of the following references from our DEIS comments are included in the references section of FEIS and we can find no evidence that they were considered in the FEIS analysis.

In our comments on the DEIS we stated:

“Extensive scientific literature, much of it produced by federal agency personnel, regarding fire and disturbance modeling is available and should be considered. Relevant publications regarding the modeling of fire and landscape dynamics and processes include:”

Keane RE, Parsons R, Hessburg P. 2002. Estimating historical range and variation of landscape patch dynamics: limitations of the simulation approach. *Ecological Modeling* 151:29-49.

Keane RE, Cary GJ, Parsons R. 2003. Using simulation to map fire regimes: an evaluation of approaches, strategies, and limitations. *International Journal of Wildland Fire* 12:309-322.

Keane RE, Holsinger L, Pratt S. 2006. Simulating historical landscape dynamics using the landscape fire succession model LANDSUM version 4.0. USDA Forest Service, Rocky Mountain Research Station, Missoula Fire Sciences Laboratory. RMRS-GTR-171CD.

Pratt SD, Holsinger L, Keane RE. 2005. Modeling historical reference conditions for vegetation and fire regimes using simulation modeling. Chapter 10 in: *The LANDFIRE Prototype Project: nationally consistent and locally relevant geospatial data and tools for wildland fire management*. M.G. Rollins, Technical Editor. USDA Forest Service, Rocky Mountain Research Station, Missoula Fire Sciences Laboratory.

In our DEIS comments we said (the following publications do not appear in the FEIS references section):

“The Wood analysis should incorporate the findings of the following papers:”

Faustini JM, Jones JA. 2003. Influence of Large Woody Debris on Channel Morphology and Dynamics on Steep, Boulder-Rich Mountain Streams, Western Cascade, Oregon. *Geomorphology* 51:187-206.

Hassan MA, Hogan DL, Bird SA, May CL, Gomi T, Campbell D. 2005 Spatial and Temporal Dynamics of Wood in Headwater Streams of the Pacific Northwest. *Journal of the American Water Resources Association* 41:899-919.

McClure JM, Kolka RK, White A. 2004. Effect of forest harvesting best management practices on coarse woody debris distribution in stream and riparian zones in three Appalachian watersheds. *Water, Air, & Soil Pollution: Focus* 4:245-261.

Nakamura F, Swanson FJ. 1994. Distribution of Coarse Woody Debris in a Mountain Stream, Western Cascade Range, Oregon. *Canadian Journal of Forest Research* 24:2395-2403.

Wing MG, Skaugset A. 2002. Relationships of Channel Characteristics, Land Ownership, and Land Use Patterns of Large Woody Debris in Western Oregon Streams. *Canadian Journal of Fisheries and Aquatic Science* 59:796-807.

Wood-Smith RD, Buffington JM. 1996. Multivariate geomorphic analysis of forest streams: Implications for assessment of land use impacts on channel condition. *Earth Surface Processes and Landforms* 21:277-393.

In our DEIS comments we stated:

“In a recent review of wood and sediment transport in headwater streams, May (2007) states: “At the present time there is limited ability to infer patterns and processes of wood delivery to streams from terrain-based mapping.” The EIS should disclose the limitations of the methods used and the level of certainty in the science behind the analysis.”

It appears that the FEIS has failed to consider this important paper.

May CL. 2007. Sediment and wood routing in steep headwater streams: An overview of geomorphic processes and their topographic signatures. Forest Science, Special Issue on Headwater Streams 53:119-130.

### **The effects of the WOPR on the USFS and other conservation plans**

The FEIS fails to respond to our substantive comments requesting consideration and disclosure of the effects of the WOPR on the Northwest Forest Plan, the US Forest Service and other land management and conservation plans. In our DEIS comments we specifically asked:

“The EIS should consider and disclose the direct, indirect, and cumulative effects of the WOPR Action Alternatives, particularly the elimination of the Northwest Forest Plan, on US Forest Service programs. The US Fish and Wildlife Service’s Biological Opinion for Option 9 (the Northwest Forest Plan) specifically states in the assumptions section:

“Alternative 9 applies to Forest Service and BLM lands; all future actions on these lands would be consistent with Alternative 9...”

How will BLM’s withdrawal from the Northwest Forest Plan affect the USFS?

The settlement agreement with AFRC that lead to the WOPR acknowledges the integrated nature of USFS and BLM management under the Northwest Forest Plan:

“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.”

How will the WOPR action alternatives affect USFS budgets, timber sales, revenues to counties, and jobs in the region? The potential effects of the BLM’s withdrawal from the Northwest Forest Plan may extend outside of Oregon and impact activities on USFS and non-federal lands throughout the range of the Northern spotted owl.”

Other related comments on the DEIS that are not considered in the FEIS include:

“How will BLM’s withdrawal from the Northwest Forest Plan affect Habitat Conservation Plans and other related plans including plans affecting species management on private land, state forests and other non-federal lands?”

“How will BLM’s withdrawal from the Northwest Forest Plan affect the Oregon Plan for Salmon and Steelhead and other conservation plans and programs that protect species and water quality?”

“How will BLM’s withdrawal from the Northwest Forest Plan affect Water Quality Management Plans, TMDL documents, and other Clean Water Act documents that assume implementation of or are based on the Aquatic Conservation Strategy of the Northwest Forest Plan?”

“The WOPR DEIS fails to consider information presented in numerous watershed Analyses that have been written as part of the implementation of the Northwest Forest Plan. This information provides an assessment of current conditions and is useful for understanding cumulative impacts.”

Other comments that the BLM has failed to consider in the FEIS include:

“The DEIS fails to consider the effects of post-fire logging and other forms of “salvage” on terrestrial habitats and species. Many studies have documented widespread impacts of post-fire logging on ecosystem processes and habitat structures (e.g., see Beschta et al. 2004, Lindenmayer et al. 2004, Noss and Lindenmayer 2006, Donato et al. 2006, Thompson and Spies 2007). In general, post-fire logging impacts are known to: (1) remove biological “legacies” important in restoring forest function after natural disturbances; (2) compact soils that can magnify erosion problems with impacts to streams; (3) compound the initial disturbance; (4) spread weeds; (5) increase mortality of conifer seedlings; and (6) elevate fire hazard due to excessive build up of logging slash. Additionally, Clark (2007) documented significant impacts to the northern spotted owl following post-fire clearcutting in burn areas in southwest Oregon. Based on these findings, Clark (2007) recommended no harvest within 1.5 km of owl activity sites following natural disturbances. In sum, not a single study has documented ecosystem benefits from post-fire logging, yet BLM would permit post-fire logging in the LSMAs following disturbance that is likely to further impact threatened species, degrade water quality, inhibit forest establishment, and elevate fire risks. The impacts of post-fire logging in light of this research need to be fully addressed in the DEIS, including how much incidental “take” post-fire logging in the LSMAs could trigger.”

“The DEIS fails to consider important factors such as species abundance, distribution, and range in the effects analysis. Basic information regarding such factors as species range and distribution is both widely available for most species and critical to assessing the impacts of the proposed changes to land management. Species associated with old forests whose range is not coincident with LSMAs under the proposed management plans will be negatively impacted. The analysis in the DEIS only considers the amount of predicted older forest and fails to consider their

geographic distribution and relevancy of LSMAs to individual species. The analysis assumes that stands in a particular seral stage all have the same value to species and does not consider factors such as patch size, frequency of disturbance, aspect, and connectivity at scales appropriate to the species.”

## **7.) The FEIS fails to use a consistent process for analyzing the alternatives**

“...NEPA only requires that federal agencies establish a consistent process for considering environmental impacts... Vermont Yankee Nuclear Power v. NRDC, 435 U.S. 519, 558 (1978).”<sup>4</sup>

The FEIS violates NEPA because it fails to use a consistent process for analyzing the alternatives. For example FEIS Page 4-780 states:

“As explained in Chapter 3, in Forest Structure and Spatial Pattern, the classification of structural stage conditions for 2006 differ slightly among the alternatives because of differences in how the inventory information is assembled for modeling under each alternative.”

The only explanation of these differences that we can find in Chapter is in a footnote on page 3-212 that reads:

“Current condition structural stage abundance differs slightly among the alternatives because of differences in how the inventory information is assembled for modeling under each alternative. The structural stage classification is made based on the Organon growth and yield curve attributes. The assignment of groupings of stands to specific yield curves varies among the alternatives, which results in slightly different current conditions. In addition, the classification for Alternatives 2 and 3 and the PRMP improved the identification of open water as non forest. The classification for Alternatives 2 and 3 and the PRMP for 2006 are largely similar, except that the classification for the PRMP resulted in the shift of acreage from young with structural legacy to stand establishment with structural legacy in the Medford District and the Klamath Falls Resource Area as a result of new growth curves developed for uneven-aged management. The following descriptions of current conditions use the 2006 data from Alternative 3.”

## **8.) Changes to the alternatives after the analysis was conducted have biased the results and violate NEPA.**

WOPR FEIS Appendix Page 696 states:

“The planned timber sale areas for the 2009 and 2010 were not included in the Deferred Timber Management Area allocation. The modeling occurred before this

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<sup>4</sup><http://www.sierraforestlegacy.org/Resources/Conservation/LawsPoliciesRegulation/KeyForestServicePolicy/FrameworkRevisions/FrameworkRevision-JudgeEnglandDecision8-01-08.pdf>

adjustment was made so these lands were simulated as a 15 year deferral in determining the harvest levels.”

No disclosure of the location, area affected, or consequences of these sales are considered in the FEIS. These sales represent cumulative effects and must be included in the analysis.

## **9.) Estimates of Riparian Reserves do not agree with S&M NEPA Documents**

Our DEIS Comment stated:

“Statements in the DEIS regarding changes to ASQ and the extent of riparian reserves conflict with the 2004 Survey and Manage SEIS, 2007 Survey and Manage ROD, and internally within the DEIS. The DEIS (Page 566) states that the No Action alternative ASQ is 32% higher than under the 1995 RMPs because, in part, the Riparian Reserves are actually much smaller (~30% smaller) than estimated in 1995. The DEIS Page 482 states that riparian reserve areas were adjusted downward for the No Action Alternative to 15% of the landscape.

These statements contradict numerous statements in the 2004 Survey and Manage SEIS and the July 2007 BLM ROD for the S&M SEIS that state that Riparian Reserves were larger than estimated in 1995 and that the take up roughly 50% of the landscape. For example:

“...reanalysis has show a 10% increase in Riparan reserves...”  
2004 Survey and Manage SEIS Page 105

“On average, 40 to 50 percent of any watershed is reserved by the application of Riparian Reserves...”  
2004 Survey and Manage SEIS Page 107

“The analysis in the Northwest Forest Plan Final SEIS underestimated the potential landscape level of protection provided by the Aquatic Conservation Strategy. The quantity of Riparian Reserve acres is higher than originally analyzed...”  
2004 Survey and Manage SEIS Page 132

“Estimates from FEMAT on the percent of the land base within Riparian Reserves averaged 40 percent (USDA, USDI 1994b:B-12). Estimation done on individual administrative units has found that these initial estimates were conservative and, in most cases, Riparian Reserves are more extensive than originally estimated.”  
2004 Survey and Manage SEIS Page 135

“Subsequent Watershed Analyses and project planning experience by the Agencies’ administrative units has shown that estimate to be 20 to 30 percent too low west of the Cascade crest where dense vegetation apparently kept photo-interpreters from seeing and mapping all intermittent streams, wet areas, and unstable soils.”  
2004 Survey and Manage SEIS Page 136

“...resulted in a 15 percent decrease in PSQ “based primarily on increases...in Riparian Reserves”...”

2004 Survey and Manage SEIS Page 136

“Other west-side units also report actual Riparian Reserve acres to be considerably higher than estimated in the documentation of the FEMAT sampling (Johnson et al. 2003).”

2004 Survey and Manage SEIS Page 136

“PSQ has been adjusted downward by approximately 15 percent primarily to more accurately reflect the extent of Riparian Reserves.”

2004 Survey and Manage SEIS Page 139

“On average, about 50 percent of the federally managed area is in Riparian Reserves (Final Supplement:136).”

2007 S&M BLM ROD Page 19

“...it is important to note that there is no map layer for Riparian Reserves...”

2004 Survey and Manage SEIS Page 124

While DEIS Page 482 states that 15% of the BLM lands within the planning area are currently classified as Riparian Reserve under the No Action alternative and that 22% were estimated to be riparian reserve in 1995. This conflicts with the text on Page 719 and Table 207 Page 719 that report that 37% of BLM lands in the planning area are riparian reserve under the No Action Alternative and Figure 1 on Page XLVIII reports

14%.

The EIS should reconcile these discrepancies. Specific documentation in the methods used to map riparian reserves should be included in the EIS. Sections of the analysis and conclusions in the wildlife section and other sections affected by this discrepancy should be reconsidered and the environmental effects of the proposed action with the correct value for riparian reserves should be discussed.”

The FEIS fails to address the conflict between the numbers presented in these various documents.

## **10.) Issues Related to the Survey and Manage Standards and Guidelines**

The DEIS included the Survey and Manage (including the 2001 ROD) as part of the NA alternative. However, it appears that the No Action Alternative was modified for the FEIS and Survey and Manage is no longer part of the No Action Alternative:

“Survey and Manage is not a component of the No Action Alternative or the action alternatives and, therefore, those species are not analyzed individually.” FEIS Page 795

The analysis however does not reflect this change (FEIS Appendices Page 690):

“For the No Action Alternative, survey and manage species sites had no harvest modeled and were not included in the ASQ. Although the survey and manage mitigation was subsequently removed from the No Action Alternative, the modeling had already been completed.”

“In Alternative 1, 2, and 3 special status species which were on Public Domain or acquired lands had no harvest modeled and were not included in the ASQ. For the PRMP, all existing identified sites on all BLM lands were modeled as no harvest and were not included in the ASQ.”

The FEIS fails to disclose what a Survey and Manage site or Special Status Species Site is, how they were determined, and what area they cover.

The FEIS fails to respond to our comment asking for clarification regarding the apparent conflict between the analysis in the DEIS and the species outcomes in the various Survey and Manage NEPA documents. Specifically we asked:

“It is difficult to reconcile the results of the Survey and Manage documents and the conclusions presented in the WOPR DEIS. The analysis presented in the Survey and Manage documents assumed the continued implementation of the Northwest Forest Plan and found that “...for 133 species there would be insufficient habitat (including known sites) to support stable populations in all or part of the Northwest Forest Plan area under all alternatives due to factors beyond the control of the Forest Service and BLM.” and 53 species “...would have insufficient habitat (including known sites) to support stable populations in all or part of the Northwest Forest Plan area”. Assuming the elimination of Survey and Manage either through the Survey and Manage NEPA documents or through the WOPR EIS it is reasonable to expect worse outcomes given the elimination of the Northwest Forest Plan under the WOPR action alternatives.”

Given the outcomes for these species under the full provisions of the Northwest Forest Plan including Survey and Manage it would be reasonable to assume that species would be more imperiled under the PRMP.

The FEIS failed to consider our comments regarding several rare or uncommon species associated with older forests. For example we commented:

“Elimination of the Northwest Forest Plan will result in a trend towards Endangered Species Act listing or listing of many species. For specific examples, see discussion of Siskiyou Mountains salamander and southern torrent salamander. The analysis should provide a discussion of the species outcomes from the FEMAT report and other Northwest Forest Plan documents and reviews.”

FEIS Pages 1-19 and 1-19 states:

“Note: The United States District Court for the Western District of Washington found a March 2004 interagency record of decision to remove the survey and manage mitigation measure invalid since it relied on a supplemental environmental impact statement that the Court found deficient in certain respects. See *Northwest Ecosystem Alliance v. Rey*, 380 F. Supp. 2d 1175 (W.D. Wash. 2005). The Court issued an order of relief on January 9, 2006. That order was later modified by another order dated October 11, 2006, which allowed the decision to eliminate the survey and manage requirement to take effect for four specified activities. Another interagency supplemental environmental impact statement was prepared to address deficiencies in the 2004 supplemental environmental impact statement found by the Court. The BLM issued a record of decision in July 2007, amending the plans within the Northwest Forest Plan area to remove the survey and manage mitigation measure from the standards and guidelines in those plans.”

The preceding FEIS passage ignores the latest court finding and the Order Denying Defendants’ Motion for Relief by United States District Court Judge Marsha J. Pechman. This order is dated November 21, 2007, roughly 1 year prior to the release of the FEIS.

The BLM has failed to analyze the elimination of the Survey and Manage Standards and Guidelines in the WOPR FEIS and has apparently the agency’s stance on the status of these Standards and Guidelines has changed between the DEIS and FEIS.

The BLM should write a supplemental EIS that examines the effects of eliminating Survey and Manage. This analysis should include the entire range of activities conducted under the Survey and Manage program including strategic surveys and consider the following publication that attests to the success of the program:

Olson, Deanna H.; Van Norman, Kelli J.; Huff, Robert D. 2007. The utility of strategic surveys for rare and little-known species under the Northwest Forest Plan. Gen. Tech. Rep. PNW-GTR-708. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 48 p.

The FEIS fails to consider information contained in Survey and Manage Annual Species Reviews. In our DEIS comments we said:

“The DEIS fails to incorporate information and conclusions from Annual Species Reviews and other previous analyses. The EIS should reconcile the findings of these assessments and the conclusions presented in the WOPR EIS for Siskiyou Mountains salamanders and all other relevant species.”

### **11.) The FEIS does not analyze the effects of the alternatives on many rare, uncommon, and SSSP species**

The FEIS provides no meaningful analysis of rare, uncommon, and sensitive species that includes the range, biology, and other important factors. The FEIS also fails to respond to our substantive comments regarding these species.

The extension of the Special Status Species Policy to all lands under the PRMPs is an improvement over the DEIS preferred alternative but we are concerned by the statement on FEIS Page 4-746:

“Application of this policy would not equate to guaranteed protection for individuals of a sensitive species, only that the conservation needs of the species would be further assessed at the project or implementation level in light of proposed actions.”

Some of our concerns related to rare species management and the WOPR FEIS include the following.

In our DEIS comments we stated:

“The EIS should consider and incorporate the work of Richards et al (2002) on habitat fragmentation in Western Oregon and its effects on species with limited dispersal ability particularly their finding that: “...the reserve system [the Northwest Forest Plan Reserve System] will not maintain habitat connectivity throughout the landscape for species with relatively short dispersal distances. Patches showing the greatest decrease in dispersal activity following the systematic removal of late seral forest habitat were identified as important areas of connectivity.”

The FEIS fails to consider this important paper. Consideration of this important work is key to understanding the impacts to many species in the WOPR plan area. Because the WOPR action alternatives reduce both the reserve system and further fragment the landscape the consequences for low mobility species should be considered and disclosed.

The FEIS fails to consider the conservation documents and agreements related to the Siskiyou Mountains salamander. In our DEIS comments we stated:

“The DEIS fails to consider the Candidate Conservation Agreement, Conservation Strategy, and Conservation Assessment for the Siskiyou Mountains salamander. The DEIS does not reference these documents. The EIS must discuss the relationship of these agreements to the WOPR alternatives and the effects of the WOPR on these agreements. The Conservation Strategy (Page 6) states that an immediate review of the plan would be triggered by a number of factors including “...a significant management direction change on Federal lands within the area of the conservation strategy.” The EIS should discuss the implications of the change of management of BLM lands proposed by the WOPR DEIS and the potential trend towards ESA listing by the loss of the Candidate Conservation Agreement. The Conservation Strategy is based on the assumption that all aspects of the Northwest Forest Plan would be continued to be implemented:

“The Siskiyou Mountains salamander conservation strategy builds upon the existing reserve systems and the Standards and Guidelines established under the Rogue River NF Land and Resource Management Plan, the Medford BLM Resource Management Plan and the Northwest Forest Plan. In this area, the reserve system includes congressionally withdrawn areas, riparian reserves, owl habitat areas, botanical reserves, late-successional reserves, and special emphasis areas (Figure 2).”

The selection of high-priority sites for protection of salamander populations purposely selected populations on or adjacent to 100-acre owl LSRs, large riparian reserves, and other areas assumed to be protected under the Northwest Forest Plan. Other aspects of the Northwest Forest Plan incorporated into the Conservation Strategy included down wood retention, green tree retention, and 15% retention in harvest units.”

A search of the FEIS revealed a single reference in FEIS Volume III to these documents that provides limited information:

**“Siskiyou Mountains Salamander Conservation Strategy**

This Conservation Strategy describes the management actions necessary to manage for this species to maintain well-distributed populations across the known range of the species on federal lands administered by Forest Service Region 6, Rogue River-Siskiyou National Forest, Siskiyou Mountains Ranger District, and the Oregon Bureau of Land Management, Medford District, Ashland Resource Area, in the northern portion of it’s range, the Applegate River 4th field watershed, and to avoid a trend towards listing under the Endangered Species Act.”

A brief reply to comments on this and other species appears in comment #107

“107. Comment: The EIS should be revised to include a more in-depth analysis of the effects of the proposed actions on the Siskiyou Mountains salamander, the Larch Mountain salamander, and the Inland tailed frog. A discussion of salamander and frog biology, habitat requirements, distribution, conservation status, and existing conservation plans need to be included in the EIS.

Response: Individual special status species were not addressed for several key reasons:

- The vegetative data available to the EIS does not contain adequate information to conduct an [sic] detailed analysis of available habitat for each individual species and would result in analysis based on more generalized habitat conditions.
- Generalized habitat descriptions for each species would result in similar analysis and results being repeated for multiple individual species.
- Individual species will be addressed at the project scale where onsite mitigation would be applied, as necessary, to meet the goals and objectives of the Special Status Species policy.”

This response is factually wrong, inadequate for the substantive comments we provided, and fails to address many issues raised in them. The assertion that “Generalized habitat descriptions for each species would result in similar analysis and results being repeated for multiple individual species” conflicts with the findings of the various Survey and Manage NEPA documents and assessments and basic biology. The differences in range and habitat of many species and the varying patterns of BLM ownership suggest that the results would vary between species.

Comments that the FEIS fails to address include:

“The DEIS analysis fails to consider the needs of species adapted to infrequent disturbance and impacts to species with limited dispersal ability. The frequency of disturbance plays a large roll in the distribution of species. Many species such as woodland salamanders (*Plethodon*) and Oregon slender salamanders (*Batrachoseps wrighti*) are associated with older forests and are sensitive to disturbance. Under the action alternatives (particularly alternatives #1 and 2) timber harvest will occur at a frequency that may not allow stands to remain in late-seral condition long enough for organisms extirpated by timber harvest to recolonize the stand and rebuild populations. The EIS must analyze and disclose the effects on old-forest dependent species with limited dispersal ability. In addition, many species exist in patchy populations that are not evenly distributed on the landscape. Specific aspects of the Northwest Forest Plan were included to protect species intolerant of disturbance, with limited mobility, and patchy populations (e.g Riparian Reserves, Matrix Standards and Guideline, snag and green tree retention, and others). The EIS should fully consider the elimination of all of the aspects of the Northwest Forest Plan.”

“The DEIS fails to consider, analyze, and disclose the effects of the proposed changes to land management plans on the Siskiyou Mountains salamander. The DEIS only mentions this species in 2 places, in Tables 100 and 255. No discussion of biology, habitat, conservation status, or existing conservation plans is presented.”

The FEIS uses a flawed analysis repeated from the DEIS for “Forest Floor Species”. In our DEIS comments we state:

“The analysis of effects on species grouped under the designation “forest floor species” is not useful in assessing the Siskiyou Mountains salamander and fails to incorporate relevant information on species biology and distribution. The analysis provides limited detail and lacks basic information regarding needed to judge the validity of the method used. The DEIS Page 721 states that 20 watersheds were analyzed but provides no information regarding which watersheds were analyzed, what scale watersheds were used, and how they were selected. Were any watersheds selected from within the range of the Siskiyou Mountains salamanders? Consideration of the landscape context is important in the assessment of the impacts to species. The entire range of Siskiyou Mountains salamanders on BLM lands is TMA under all three action alternatives. How relevant are the 20 watersheds analyzed to the Siskiyou Mountains salamander? Species ranges and reserved lands are not randomly distributed across the landscape. The effects to species with small ranges relative to the overall planning area may be quite different from an average condition of watersheds in the planning area.

The analysis assumes that all portions of the landscape are of equal value to species. However, Siskiyou Mountains salamanders occupy very specific habitat composed of rocky soils under closed canopy forests. They are restricted to low to moderate elevations and are primarily found on north facing aspects. Their range in Oregon is limited to the Applegate River Watershed south of the town of Ruch.

Many of these comments are relevant to other species and the EIS should consider unique aspects of biology and distribution in the effects analysis.”

The FEIS fails to consider these comments or conduct a meaningful analysis of rare, uncommon, and sensitive species.

We pointed out several factual errors in the DEIS regarding the habitat and range of the Larch Mountain Salamander:

“The DEIS fails to consider and disclose the effects of the proposed changes to land management plans on the Larch Mountain salamander and contains factual errors regarding the habitat and distribution of this species. DEIS Table 205 Page 714 states:

“New data showing it restricted to Columbia Gorge and talus-skree habitat. The BLM does not have this habitat. Based on extensive surveys on Mt Hood NF. WA habitat data not seem to apply to OR.”

The EIS should provide a source and description of the “new data” that this passage mentions. This statement is contradicted by information contained in Survey and Manage Annual Species reviews and other Survey and Manage documents, the GeoBob database, published peer-reviewed literature, and a recently published field guide chapter.

The species is not restricted to the Columbia River Gorge and talus-scrub habitat. South of the Columbia River Gorge, the species has been observed within 2 miles of BLM managed lands (designated TMA under WOPR alternative #2), the type locality on Larch Mountain is approximately 3.5 miles northeast of BLM managed lands, the species has been observed as far as 15 miles south of the gorge in the Bull Run Watershed on USFS lands and 18 miles south of the Columbia River Gorge in the Hood River drainage.

Records for all these observations are in the GeoBob database and were entered in the ISMS database prior to the creation of the GeoBob database.

While historically associated with rocky soils under forest canopy, the species has been found several habitat types including old-growth forest with loamy soils (Jones et al 2005). Inclusion in the Survey and Manage program was contingent on a strong association with late-seral forests and agency documents relating to Survey and Manage document the association of this species to late-seral forested habitats.

As noted elsewhere in these comments, unsupported assertions are not adequate to comply with NEPA (See attached document MT\_Ashland\_Opinion.pdf). The assertion that Larch Mountain salamander habitat is not found on BLM land should be documented to meet this standard. The meaning of the last two sentences of the statement are somewhat unclear but appear to indicate that extensive surveys on the

Mt. Hood NF have somehow demonstrated that the species uses different habitat in Washington and Oregon.

We have reviewed the survey data in the GeoBob database and find few surveys have been conducted for this species in Oregon under the Survey and Manage program. The EIS should document the surveys referred to in this statement and how differences in habitat use between Oregon and Washington were established from these surveys.”

Rather than correct these errors or respond to our substantive comment, the FEIS drops this section and fails to address the distribution or biology of the species.

The FEIS fails to consider our comments regarding the Oregon slender salamander, a species highly dependent on legacy structures and old-growth forests whose range is largely comprised of the Salem and Eugene BLM Districts. The lack of green tree and down wood retention will significantly affect this species.

Assertions by agency personnel are insufficient to meet the requirements of NEPA however much of the sections and analysis relating to rare, uncommon, and sensitive species appears to be little more than assertion. For example the failure to discuss the distribution and biology of these species makes the leap between a highly simplistic “model” and the conclusions contained in the FEIS questionable. For example the FEIS Page 4-751 states:

“Based on the results of this modeling, at least 50% of the forest floor habitat would persist in habitat quality category 4 or 5 under all alternatives. Therefore, forest floor associated species would persist on BLM-administered lands under all alternatives, including the PRMP.”

Given the increase in mature and structurally complex forests under the PRMP and the elimination of the Northwest Forest Plan Standards and Guidelines it is difficult to understand the conclusions reached given the biology of many of these species. As we noted in our cover letter for this protest, the courts have found that analyses that are “inherently implausible” fail to meet the standards of NEPA. In addition to being inherently implausible the conclusions in the FEIS are contrary to many of the conclusions of the various Survey and Manage NEPA documents and analyses.

Without discussing the range and biology of these species it is impossible to reach the conclusion found on FEIS Page S-18:

“For sensitive wildlife species that depend on mature and structurally complex forest, the BLM has very little ability to influence the outcome to these species. The principal determining factors on the overall forested landscape are the development of USDA Forest Service reserves into mature and structurally complex forest, and the continued intensive management of nonfederal forests.”

**The FEIS fails to address our comments regarding the Southern Torrent Salamander**

We provided the following substantive comments on the DEIS the FEIS fails to address them:

“Southern Torrent Salamander (*Rhyacotriton variegatus*) was petitioned for listing under the Endangered Species and on June 6, 2000 the US Fish and Wildlife Service determined that listing was not warranted (USDI 2000). It is currently a USFWS Species of Concern in Oregon and listed as a vulnerable species by the Oregon Department of Fish and Wildlife. In their finding the Fish and Wildlife Service relies heavily on the Northwest Forest Plan’s Aquatic Conservation Strategy stating:”

“Based on the evidence that southern torrent salamanders appear to stay in very close proximity to watercourses, we believe the riparian reserve system of the currently adopted and court-tested Forest Plan [Northwest Forest Plan] provides adequate protective measures to maintain the quality of most of the riparian and aquatic habitats for the southern torrent salamander on public lands across the range of the species.”

and conclude:

“...we believe that current regulatory practices, while not ideal, provide sufficient protection to insure that the existence of the species is not threatened at this time. While recent improvements in protections of southern torrent salamander habitats have been implemented on Federal lands, habitats on private lands are still vulnerable until specific changes in policy and procedures change the way these habitats are protected.”

“While this species has a limited range that includes all WOPR BLM districts with the exception of the Klamath Falls Resource Area, has a demonstrated association to older forests, and is negatively impacted by timber harvest, we find no mention of this species in the WOPR DEIS. We request that the Final DEIS analyze and disclose the direct, indirect, and cumulative impacts to this species and disclose any trend towards listing that might occur under the activities proposed in the WOPR DEIS. This species is found in small seeps and springs and high order, high gradient streams, is particularly vulnerable to changes in microclimate, and has limited capacity disperse across the landscape. The elimination of riparian reserves along intermittent streams and small seeps and springs may significantly affect this species.”

## ***BLM FAILED TO COMPLY WITH THE ENDANGERED SPECIES ACT***

### **1.) ESA Section 7 Consultation**

The BLM has failed to conduct section 7 consultation as required by the Endangered Species Act for Northern Spotted Owl, Marbled Murrelet, Salmon, Steelhead and other ESA listed species. BLM has indicated that it will not prepare a Biological Assessment or conduct section 7 consultation for species listed under the Endangered Species Act.

The BLM and Forest Service wrote Biological Assessments and consulted on the original Northwest Forest Plan and reinitiated consultation when additional species were added to the Threatened and

Endangered Species List. Consultation was also conducted for the attempted changes to the Aquatic Conservation Strategy of the Northwest Forest Plan.

It appears that until recently the BLM was planning to conduct Section 7 consultation. The Draft EIS pages 829 and 830 states:

“The revision of the Resource Management Plans with management action for western Oregon BLM’s resource programs constitutes a federal action that is subject to Endangered Species Act consultation.”

“Consulting on the RMP and Environmental Impact Statement provides for an evaluation of whether jeopardy, or destruction or adverse modification of critical habitat are likely...”

“Information relating to proposed and listed species and proposed and designated critical habitat (e.g., conclusions on how the alternatives affect listed species) has been incorporated into the Draft Environmental Impact Statement and will be used in the development of the Biological Assessment. to occur at the program scale

“The purpose of a Biological Assessment is to assess the effects of the implementation of the proposed RMP as described and analyzed in the Final Environmental Impact Statement.”

The American Forest Resource Council filed a legal motion on October 29, 2008 claiming that the BLM has violated its settlement agreement with AFRC by failing to initiate consultation. The conservation community feels strongly that consultation is necessary. In the past similar plans have been consulted on including the Northwest Forest Plan and 1995 RMPs and the WOPR DEIS indicates that consultation is necessary and will be conducted.

The WOPR FEIS stands alone in its assertion that consultation is unnecessary. The failure of the BLM to consult on the WOPR RMPs will be challenged in court and this decision will lead to unnecessary conflict, expense, and wasted time for all parties involved. We are concerned that the BLMs change in its stance on the need for consultation between the DEIS and FEIS is due to undisclosed analysis or other information that suggests that the proposed management plans will result in jeopardy for one or more species.

## **2.) The plan will have significant impacts to the Northern Spotted Owl that will jeopardize the continued existence of the species**

The activities in the PRMPs will result in the continued decline of the Northern Spotted Owl. The FEIS and PRMPS violate the Endangered Species Act and the National Environmental Policy Act.

- The WOPR FEIS and PRMPs are based on a flawed Northern Spotted Owl Recovery Plan
- The analysis of the effects on the Northern Spotted Owl in the FEIS is flawed
- The FEIS fails to consider important scientific publications
- The FEIS fails to disclose all analysis conducted by the BLM and others
- The PRMPs as written will jeopardize the Northern Spotted Owl

- The FEIS misrepresents scientific publications and repeats errors contained in the Draft Northern Spotted Owl Recovery Plan

**The WOPR FEIS and PRMPs are based on a flawed Northern Spotted Owl Recovery Plan**

The Northern Spotted Owl Recovery Plan is the foundation for the WOPR FEIS and PRMPs. The attached peer reviews of the Northern Spotted Owl Recovery Plan should be included in the WOPR administrative record. Because the Final Spotted Owl Recovery plan which the WOPR PRMP is based on was released after the comment period for the WOPR DEIS ended we were unable to consider it in our comments. Because the WOPR FEIS relies on a plan that was not written until after the DEIS the WOPR FEIS violates NEPA for failing to allow for meaningful public participation and comment on the DEIS. The BLM must provide a comment period and issue a supplemental EIS that considers comments and the attached peer reviews of the Final Recovery Plan.

**The analysis of the effects on the Northern Spotted Owl in the FEIS is flawed**

The FEIS fails to disclose the direct and indirect effects of the PRMPs on large and small blocks of Northern Spotted Owl habitat. The analysis of large and small blocks is only conducted across all land ownerships. No BLM specific analysis is presented.

The FEIS fails to consider the quality of owl habitat in the analysis. Factors that the FEIS fails to consider are the lack of green tree, down wood, and snag retention in TMAs. The FEIS is flawed because it considers areas that represent low quality habitat (e.g. 11" diameter, no legacy structures) as equivalent to very old, complex stands.

**The FEIS fails to consider important publications**

The FEIS fails to consider the following publication provided with our comments:

Carroll C and Johnson DS. In Press. The importance of being spatial (and reserved): Assessing northern spotted owl habitat relationships with hierarchical Bayesian models. Conservation Biology. (CarrollJohnson\_CB\_inpress.pdf)

This paper is now published:

Carroll C and Johnson DS. 2008. The importance of being spatial (and reserved): Assessing northern spotted owl habitat relationships with hierarchical Bayesian models. Conservation Biology 22: 1026-1036.

Carroll and Johnson state:

“Our results suggest that proposed changes to the network of owl habitat reserves would reduce the proportion of the population protected by up to one-third, and that proposed guidelines for forest management within reserves underestimate the proportion of older forest associated with maximum owl abundance and inappropriately generalize threshold relationships among subregions.”

The FEIS fails to comply with NEPA because it fails to consider this important scientific publication which presents an opposing viewpoint to the BLM.

The FEIS fails to consider the following publication cited in our comments:

Clark DA. 2007. Demography and Habitat Selection of Northern Spotted Owls in Post-Fire Landscapes of Southwestern Oregon. MS Thesis. 202 pp.

**The FEIS fails to disclose relevant information**

We are concerned that the FEIS fails to disclose all analyses conducted on the effects of the WOPR on the Northern Spotted Owl. NEPA requires that the FEIS disclose all analyses conducted not only those that support the BLM's conclusions. Of particular concern is the BLM's change of position between the DEIS and FEIS regarding the need for section 7 consultation under the Endangered Species Act. Was this the result of an undisclosed analysis? Were Biological Assessments prepared in a final or draft form? The BLM should issue a supplemental EIS that discloses any other analysis or discussion related to the WOPR's effects on rare, sensitive, or ESA listed species.

**The plan will have significant impacts to Northern Spotted Owls that will jeopardize the continued existence of the species**

The Wildlife Society's comments on the Final Northern Spotted Owl Recovery Plan state:

“Implementation of the BLMs Western Oregon Plan Revisions would have clearly negative consequences for spotted owls and their recovery.”

This view is shared by the review of the plan by the American Ornithologist's Union and The Society for Conservation Biology. Rather than restate the concerns expressed in those reviews we have included them as attachments to our protest and include them as part of it.

In addition to the shortcomings listed in the scientific peer reviews, the WOPR FEIS and PRMPs violate NEPA and will jeopardize the Northern Spotted Owl in violation of the Endangered Species Act Because:

- The WOPR FEIS uses a habitat definition that ignores the importance at the landscape scale and context of late mature stands to owl habitat (for example see: Dugger et al. 2005, Carroll and Johnson 2008). The FEIS analysis provides no minimum patch size or consideration of edge effects.
- The WOPR FEIS returns owl management to a discarded system that was determined to be unacceptably risky in past analyses (the DCA system; USFWS 1992, see also Raphael et al. 1994, Noon and Blakesley 2006).
- The WOPR FEIS fails to consider the effects of the elimination of the Northwest Forest Plan including 100-acre owl cores. These islands of habitat provide for the continued existence of the species in matrix lands. Other provisions of the Northwest Forest Plan that are eliminated include green tree, snag, and down wood retention and matrix standards and guidelines
- The WOPR FEIS fails to consider the effects of post-fire logging on owls including the publication by Clark (2007).
- The WOPR FEIS fails to consider the effects of the proposed actions on owl populations.

In our comments on the WOPR DEIS we stated:

“The EISs must discuss effects to populations and discuss how the potential elimination of over 50% of the remaining owl activity centers complies with the Endangered Species Act and the BLM’s mandate to recover Endangered Species.”

Since the implementation of the Northwest Forest Plan the overall amount of owl habitat has continued to decline and the population has decreased a roughly 4% rate over the last 15 years. According to FEIS Page S-19 63% of known and predicted northern spotted owl sites occur in the “harvest land base” under the PRMP. This number may represent an underestimate of potential sites lost because TPCC withdrawn lands are not included in the “harvest land base” but may be subject to logging (see our comments on this issue elsewhere in this protest) and LSMAs and RMAs will be logged after fire or other disturbance resulting in additional loss where owls may have survived but succumb to the secondary impacts of logging burned areas.

The FEIS fails to disclose the methods used to calculate the “predicted” northern spotted owl sites so it is difficult to interpret the numbers of predicted owls but given the catastrophic loss of owl habitat over the last century, the continued decline of the species, and the emergence of new threats including climate change it is imperative that further loss of habitat be halted.

Unfortunately, although the No Action Alternative would increase the area of owl habitat in large blocks the BLM has selected an alternative that would reduce the area of habitat in large blocks by 9% over the next 18 years (FEIS Page 4-645).

### **The FEIS misrepresents scientific publications and repeats errors contained in the Draft Northern Spotted Owl Recovery Plan**

The FEIS makes errors interpreting the scientific literature regarding the biology of the Northern Spotted Owl many of these errors are taken from the Draft Recovery Plan for the Northern Spotted Owl. For example, in the reply to comment #126 the FEIS states:

“...recent studies in the California Klamath and Oregon Coast Range provinces (e.g., Dugger et al. 2005) found that habitat comprised of a mixture of older and younger forests supported owl reproduction better than habitat comprised almost exclusively of older forest.”

This misinterpretation of Dr. Dugger’s work also appears in a footnote on FEIS page 3-285. We provided Dr. Dugger’s comments on the Draft Recovery Plan as part of our comments on the WOPR DEIS. In this document, Dr. Dugger refutes this misinterpretation of her work. Furthermore, this conclusion is directly contradicted by Carroll and Johnson (included with out DEIS comment and attached to this protest). Who found a continuously increasing relationship between the proportion of mature and old-growth forests and owl abundance in their central and northern analysis areas.

### **3.) The Plan Violates NEPA, the Clean Water Act, and the Endangered Species Act as they relate to fish species and the analysis of water related resources**

The FEIS fish analysis fails to present an adequate affected environment section. Rather than providing a concise affected environment section in chapter 3 for fish, the FEIS provides a long argument for the methods used in the analysis and the conclusions that are reached in chapter 4. According to FEIS Page 3-372:

“This analysis focuses on the key ecological processes that shape fish habitat over time, rather than static conditions at one point in time.”

Consideration of only the processes that affect fish habitat is insufficient to meet the requirements of NEPA. By its own admission the FEIS does not focus on “static conditions at one point in time”. These “static conditions”, the affected environment, are the foundation for the analysis and allows examination of changes over time that result from the alternatives.

The FEIS failed to consider the following comment:

“Scope and Limitations - In the Burnett et al (2007) publication the authors include a section titled “Scope and Limitations”. Because the calculation of intrinsic potential underlies the analysis of effects on fish, the EIS should discuss both the advantages and limitations of using this method including but not limited to the two following statements:”

“Intrinsic potential models may be limited by incorporating landform controls but not other abiotic or biotic factors. These can affect the suitability of freshwater habitat for salmonids, and thus the accuracy of our landscape characterizations.” Burnett et al 2007 Page 76 emphasis added.

“The approach taken in this study is most reliably applied and interpreted at broader spatial scales. The resolution and accuracy of spatial data undoubtedly reduced the accuracy of sub-province- and province scale characterizations.” Burnett et al 2007 Page 76.

The FEIS fails to respond to important comments made by the Science Review Team and ignores relevant science that is contrary to the BLM’s position. For Example, the Science Review Team stated:

“More recent papers examine much longer records that better represent the properties of five-year return period events (Jones 2000) and other papers would be more appropriate sources).”

Jones (2000) does not appear in the FEIS references section and this key scientific information has been ignored in the analysis.

The Science Review Team also noted that Bowling and Lettenmaier (2001) estimated the effect of roads on peak flow responses and stated “It is not clear that the results from these studies were considered in the DEIS analysis.” We can find no mention of this paper in the FEIS.

The analysis of stream temperature effects is a key part of the FEIS analysis particularly as it relates to Clean Water Act compliance and recovery of ESA listed fish. However, the analysis is flawed. For example in the Science Review Teams comments they state:

“More recent primary literature based on empirical data and describing riparian buffers and their effects on stream temperature has been overlooked. Chief among the recent work that appears overlooked is a review by Moore et al. (2005). The review concludes that riparian buffers decrease the magnitude of stream temperature and riparian microclimate warming associated with harvest, and that substantial warming has still been observed in both un-thinned and partial retention buffers.”

We can find no mention of Moore et al (2005)<sup>5</sup> in the FEIS nor does it appear that this important paper is considered in the analysis.

Important conclusions in the Moore et al (2005) paper include:

“Studies in rain dominated catchments suggest that buffers may reduce but not entirely protect against increases in summer stream temperature.”

“Forest roads and their rights-of-way would have a similar influence to cut blocks in terms of enhanced solar radiation inputs. Brown et al. (1971) observed downstream warming of up to 7°C in a 46 m reach of Deep Cut Creek in Oregon, which was completely cleared of vegetation during road construction. In the central interior of B.C., streams warmed over 2°C across a 50 m right-of-way, 1.4°C across a 30 m right-of-way, and about 0.4°C across a 20 m right-of-way (Herunter et al., 2003).”

“Forest roads and their rights-of-way would have a similar influence to cut blocks in terms of enhanced solar radiation inputs. Brown et al. (1971) observed downstream warming of up to 7°C in a 46 m reach of Deep Cut Creek in Oregon, which was completely cleared of vegetation during road construction. In the central interior of B.C., streams warmed over 2°C across a 50 m right-of-way, 1.4°C across a 30 m right-of-way, and about 0.4°C across a 20 m right-of-way (Herunter et al., 2003). Another possible effect of forest roads is the interception of ground water and its conveyance to a stream via ditches, where it is exposed to solar radiation, effectively replacing the cooling effect of ground water inflow with inflow of warm ditch water. This process has been observed in the central interior of B.C. (D. Maloney, B.C. Ministry of Forests, Northern Interior Region, October 3, 2000, personal communication)...”

“The potential for cumulative effects associated with warming of headwater streams is a significant management concern. Beschta and Taylor (1988) demonstrated that forest harvesting between 1955 and 1984 in the 325 km<sup>2</sup> Salmon Creek watershed produced substantial increases in summer water temperature at the mouth of the watershed.”

“An important aspect of cumulative effects is the indirect impacts of forest harvesting. For example, removing riparian vegetation not only reduces shade but

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<sup>5</sup> Moore RD, DL Spittlehouse, A Story. 2005. Riparian microclimate and stream temperature response to forest harvesting: A review. *Journal of the American Water Resources Association* 41:813-834.

can result in a stream becoming wider and shallower due to bank erosion, which can produce a greater temperature response to the additional heat inputs. Aggradation caused by logging related mass movements and subsequent sediment loading can similarly cause stream widening and promote warming (Beschta and Taylor, 1988). In addition, debris flows that remove vegetation and scour channel beds to bedrock can lead to marked warming in headwater tributaries (Johnson and Jones, 2000).”

These conclusions contradict the FEIS analysis.

The Science Review team comments:

“Point increases in temperature propagate downstream (illustrated in Moore et al. 2005, Fig. 2) other factors being equal; thus consideration of changes in stream temperature at a point (as was done in the DEIS analysis) cannot capture the cumulative effects of changing overstory conditions on stream temperature (noted in Allen et al. 2007).”

Allen et al 2007 does not appear in the lit cited section of the FEIS.

The statement on FEIS Page 3-378 that the CLAMS project predicting a few streams producing most wood does not agree with Figure 3-108 which shows most streams producing large amounts of wood. We commented on this error in our DEIS comments. The FEIS fails to correct this error or address our comment. Including axis labels would have helped clear up the confusion about this graph.

Figure 3-113 (FEIS Page 3-383) shows that a no harvest alternative would roughly DOUBLE the input of wood from BLM lands. Given the current depleted amount of wood in streams throughout the plan area and its negative effect on fish habitat it is difficult to conclude that the proposed actions will not jeopardize ESA listed fish species and have serious significant impacts to other species and aquatic organisms.

The Science Review Team stated in their comments on the DEIS:

“The body of literature on sediment delivery distance and buffer strip efficacy is larger and more diverse than that suggested in the DEIS sediment analysis, including studies from the region and elsewhere (Belt and O’Laughlin 1994, Bren 1998, Lynch and Corbett 1990, Swanson et al. 1987); many of these studies arrive at different conclusions than the DEIS.”

None of these references appears in the literature cited section of the FEIS and the FEIS appears to have ignored these significant publications.

The sediment analysis is founded on an unreasonable assumption:

“This analysis assumes that, like the watersheds used in the Cederholm study, existing fine sediment levels in watersheds in the planning area are not currently above background rates. The assumption is based on the current condition of fine

sediment in streams within the planning area on BLM-administered lands (see Chapter 3, Fish section).” FEIS Page 4-799

Given the level of impacts throughout much of the WOPR plan area it is unreasonable that sediment levels in streams are not elevated. This assumption is contradicted by information contained of FEIS Pages 3-386 and 3-387 especially Figure 3-116

The affected environment section for water does not include a listing of Clean Water Act listed streams. This information is a key component of the affected environment failure to include it is a violation of NEPA.

Prepared by:

Richard S. Nauman  
Conservation Scientist  
National Center for Conservation Science and Policy  
84 Fourth Street  
Ashland, OR 97520  
541-482-4459 x307