



THEODORE R. KULONGOSKI
Governor

December 8, 2008

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

Dear Mr. Shepard:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



THEODORE R. KULONOSKI
Governor

TRK:mcjb
c: Secretary Dirk Kempthorne