

**PROTEST OF THE FEBRUARY 2005
CASCADE-SISKIYOU NATIONAL MONUMENT
PROPOSED RESOURCE MANAGEMENT PLAN/
FINAL ENVIRONMENTAL IMPACT STATEMENT**

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March 14, 2005

VIA FACSIMILE AND OVERNIGHT DELIVERY

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**RE: PROTEST OF BLM'S PROPOSED RESOURCE MANAGEMENT PLAN
AND FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE
CASCADE-SISKIYOU NATIONAL MONUMENT**

The Soda Mountain Wilderness Council (SMWC), joined by the other groups named on the cover of this protest and each of these group's individual members (collectively, "Conservation Groups" or "protesting parties"), submit this protest of the Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) for the Cascade-Siskiyou National Monument issued February 11, 2005. This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and contains: (1) a description of the interests of the Conservation Groups; (2) a statement of the parts of the PRMP/FEIS being protested; and (3) a concise statement explaining the various ways that the Bureau of Land Management (BLM) acted unlawfully or in error. The Conservation Groups have included citations where appropriate to comments previously submitted and referenced in Section 5 of the PRMP/FEIS to demonstrate that issues raised in this protest were raised before BLM, but either ignored or inadequately addressed by the agency.

Interests of Parties

The names, mailing addresses and telephone numbers of the Protesting parties are shown on the cover page. 43 C.F.R. § 1610.5-2(a)(2)(i). The interests of all protesting parties relate to proper compliance by BLM with the Proclamation that established the Cascade-Siskiyou National Monument, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, and other federal law, as well as the impacts to public and private lands and resources in the Monument that will be negatively affected by BLM's PRMP. All of the protesting parties have been intimately involved throughout the planning process for the Cascade-Siskiyou National Monument, by, among other things, submitting comments and attending public meetings during the planning process. The Conservation Groups use the Cascade-Siskiyou National Monument area for activities such as field trips and research, and many of the members of the respective protesting parties have hunted, hiked, fished, camped in and otherwise used and enjoyed the area affected by the Monument PRMP for recreational, scientific, and educational activities.

The protesting parties have submitted comments for the record throughout the planning process for the Cascade-Siskiyou National Monument, including the submission of comments on the Draft RMP/EIS by the Conservation Groups on December 19, 2002 and the submission of additional comments by TWS on December 19, 2002. These comments discussed all issues protested here for the record. 43 C.F.R. § 1610.5-2(a)(2)(iv).

The Conservation Groups, along with other organizations not formally protesting the PRMP/FEIS, have also submitted detailed comments on the PRMP/FEIS to the Monument Manager, as part of the concurrent 30-day public comment period. Because these comments set forth the Conservation Groups' concerns with the PRMP/FEIS in detail, a copy is attached hereto as Appendix 1 and incorporated herein by reference.

Parts of Plan Protested

In the "Dear Interested Party" letter, BLM seeks to distinguish between "protestable land use plan decisions" and other "implementation level decisions" that are not subject to protest but instead will be subject to a separate appeal process at the time that the Approved RMP and Record of Decision (ROD) is issued. FEIS at ii-iv. However, as also stated in the "Dear Interested Party" letter, land use planning decisions "provide management direction and guide future actions" and differ from implementation level decisions because "although the former are themselves final and effective upon adoption, they normally require additional decision steps (such as permit approvals) before activities having on-the-ground impacts can be carried out." FEIS at iii-iv. Despite BLM's categorization, certain decisions, such as the "framework for making future livestock decisions," as well as the approach to developing treatment projects and the pilot studies that will be the basis of the adaptive management strategy, do in fact guide future actions and require additional decision steps (such as the issuance or renewal of grazing leases) prior other activities taking place. Accordingly, the Conservation Groups protest these aspects of the FEIS, as well.

Specific provisions protested include those identified in the comments, attached as Appendix 1 and the following:

- Chapter 2 Proposed Management
 - Old Growth Emphasis Area, FEIS at 37-54
 - Diversity Emphasis Area, FEIS at 55-63
 - Livestock Grazing, FEIS at 75-83
 - Transportation and Access, FEIS at 84-97
 - Recreation and Visitor Services, FEIS at 98-108
 - Water Quality Management, FEIS at 112
 - Best Management Practices, FEIS at 112
 - Monitoring, FEIS at 115-116
 - Linear Rights-of-Way, FEIS at 119
 - Communication Sites, FEIS at 120
- Chapter 3 Environmental Consequences
 - Effects on the Diversity Emphasis Area, FEIS at 129-132

- Effects on Water Resources, FEIS at 139-144
- Effects on Terrestrial Wildlife Species and Habitats, Recreation and Visitor Services, FEIS at 156
- Cumulative Effects, FEIS at 175-177
- Chapter 5 Public Comments, FEIS at 199-229
- Appendices
 - Appendix C (Implementation, Monitoring and Adaptive Management Framework)
 - Appendix E (Wildland Fire Occurrence and Risk Assessment)
 - Appendix G (Strategy for Controlling the Spread of Noxious Weeds and Other Invasive Grasses in the Cascade-Siskiyou national Monument)
 - Appendix I (Standards for Rangeland Health and Guidelines for Livestock Grazing Management)
 - Appendix J (Monitoring Strategy and Projects)

While the above-listed specific provisions are protested, the basis for this protest resides throughout the PRMP/FEIS. The specifically protested provisions represent the result of, and are based on, all of the information and analyses in the FEIS, and thus to the extent that supporting information is in error, it provides a basis for the protest of the specific provisions. None of the specifically protested provisions are valid because they are based on failures to comply with the Monument Proclamation or other applicable laws or on otherwise inadequate analyses, as discussed in detail below.

Concise Statement Explaining the Various Ways the Bureau of Land Management Acted Unlawfully or in Error

I. THE PRMP/FEIS DOES NOT COMPLY WITH THE MONUMENT PROCLAMATION.

The Cascade-Siskiyou National Monument was established on June 9, 2000 pursuant to a Presidential Proclamation that noted many of the special values of this “biological crossroads” which is “in an area of unique geology, biology, climate, and topography.” FEIS, Appendix A. The Proclamation identifies the “spectacular variety of rare and beautiful species of plants and animals, **whose survival in this region depends upon its continued ecological integrity.**” *Id.* (emphasis added). The Proclamation references many of these species specifically, sets apart and reserves the lands that comprise the Monument “for the purpose of protecting the objects identified above” and directs the Secretary of the Interior to take other specific actions. *Id.* BLM acknowledges that the Proclamation “provides the principal management direction” for the Monument and “clearly dictates that the Bureau of Land Management (BLM) manage the monument ‘for the purpose of protecting the objects identified.’” FEIS at 6. BLM also states: “The purpose of this management plan is to identify management concerns associated with the monument, and to determine the best course of action for the protection, maintenance, restoration, or enhancement of monument resources as required by the proclamation.” FEIS at 3. Unfortunately, many aspects of the PRMP/FEIS do not comply with the purpose and specific language of the Proclamation.

**A. Insufficient road closures/decommissioning
(pp. 29-45 of Conservation Groups' Comments, Appendix 1)**

The Proclamation requires that, in order to protect the Monument objects, “the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road and shall close the Schoheim Road, except for emergency or authorized administrative purposes.” FEIS at A-2. The Proclamation requires the Monument management plan to include “appropriate transportation planning that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.” FEIS at A-3. BLM acknowledges that the existing road network in the Monument “was primarily designed to access and remove timber products.” FEIS at 87. However, BLM also improperly identifies the existing transportation system as “essential to providing and maintaining adequate access,” for “protecting important resources” and for “gaining a better understanding of the unique ecosystems.” FEIS at 199.

1. Proposed transportation system will negatively impact Monument objects in violation of the Proclamation.

As discussed in detail in the Conservation Groups' comments on the DEIS and in their comments on the FEIS (Appendix 1, pp. 29-34), there is extensive scientific literature documenting the harms caused by roads on ecosystems, including fragmentation of habitat resulting from excessively high road densities. In addition, BLM's own road analysis confirms that roads harm Monument objects, noting:

- “Activities such as timber harvest and road-building have changed natural processes across the landscape by creating smaller patches of forest habitat” and “Habitat fragmentation and the loss of connectivity threaten the biological integrity of the CSNM in the short term” (FEIS at 6).
- “Extensive road networks can result in negative impacts on wildlife and aquatic species and habitats; impaired hydrologic function; introduction and spread of exotic species; reductions in site productivity; and increased sediment production” (FEIS at 87).
- “Analysis of the existing transportation system indicates that the greater monument landscape has road densities in excess of those cited in the literature as being detrimental to ecosystem processes and wildlife...” (FEIS at 87).
- “Many of these existing roads...still require maintenance and may be associated with adverse affects on ecological systems (FEIS at 87).
- “...higher than expected counts of weed populations occur within 100 meters (328 feet) of roads” (FEIS at 89).
- Illegal cross-country use by motorized vehicles remains a problem in the monument. Roads also facilitate the illegal dumping of trash and toxic or hazardous waste” (FEIS at 89).
- “Some of the worst weed infestations are along roads that will remain open and weed spread along these roads is likely” (FEIS at 131).

Further, BLM's road analysis showed that road densities in the Monument were above recognized density threshold for a number of wildlife species in the Monument. *See, e.g.,*

FEIS at 93, 155. The Conservation Groups' comments on the DEIS and their comments on the FEIS discuss the minimum standard of road densities at or below 2 mi/mi² to avoid certain harm to Monument objects, which would still be higher than optimal for certain species (see Appendix 1, p. 32). Nonetheless BLM has retained sufficient roads to keep road densities in excess of those documented as impacting wildlife habitat of species identified for protection as Monument objects, especially in owl core areas (see Appendix 1, p. 32). This is especially troubling in light of BLM's conclusions that "mileage estimates are generally conservative, as not all private roads or non-inventoried roads are in the BLM database" (FEIS at 84) and that "the actual road miles could be 20-40 percent more than what is in the BLM database" (FEIS at 143). Therefore, the fragmentation of habitat is even greater than BLM has acknowledged and even that acknowledged level will have unacceptable impacts on the Monument objects.

2. BLM has included roads in the Monument transportation system that are not recognized as legitimate routes and/or do not meet the legal definition of "roads."

FEIS: Plate 1 shows many miles of vehicle routes in the CSNM listed as "Unknown" on Plate 1's "Legend." It is the Conservation Groups' understanding that these are unauthorized routes, not recognized by BLM as inventoried roads. In addition, some of these unrecognized roads are also more comparable to off-road routes – not legitimate roads at all. Further, Map 18 (FEIS at 79) shows many miles of roads and jeep trails in the DEA closed to the public that are open to motor vehicle use by livestock operators: "The use of roads for livestock operations will be limited to designated open roads and be consistent with the CSNM transportation management plan, except where permitted by the monument manager (Map 18)" (FEIS at 79). No version of this statement nor Map 18 were in the DEIS.

As required by the Proclamation, all motorized and mechanized vehicle use is to be confined to roads formally designated in the Resource Management Plan. In order to constitute valid "roads," these roads must also meet the criteria set out in 43 C.F.R. § 19.2(e): "an improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use." In addition, the legal definition of a road, according to the U.S. Department of the Interior, is derived from the definition of "roadless" in the legislative history of FLPMA: "roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road" (H.R. Rep. No. 94-1163 at 17 (1976)).

As such, BLM cannot legitimately permit use of such off-road routes on a routine basis, maintain these off-road routes, or authorize others to use them. Since they are not identified as legal roads by BLM, these off-road routes may not be included in the Monument's transportation plan. "Unknown" vehicle routes on Plate 1 (as well as any not mapped) must be decommissioned and should not be included on any maps of "roads" in the Monument.

3. BLM has not closed roads or routes identified as unnecessary or otherwise illegitimate, or committed to identification or all such roads and to their restoration.

In addition to identifying roads as needed for purposes not permitted in the Proclamation, BLM also improperly defers closure of roads that have met the already heightened burden of being found unnecessary. The FEIS identifies "approximately 24 miles of road that are not

needed for monument management” and notes that decommissioning would reduce road densities and benefit Monument objects. However, BLM does not commit to decommissioning these roads, stating only that they “may be considered for reduction.” FEIS at 93.

Similarly, the FEIS states that “unregulated use of OHVs/mechanized vehicles off of designated routes has the potential to damage monument resources,” and acknowledges that the Proclamation “prohibits ‘all motorized and mechanized vehicle use off road.’” FEIS at 93. However, instead of committing to decommissioning and restoring these routes, the FEIS only states that “existing OHV/mechanized vehicle routes not on designated roads will be considered for restoration.” FEIS at 93. Since the use of these illegal routes is prohibited by the Proclamation and unquestionably damages Monument objects, BLM should prioritize identification, closure and restoration of such routes.

The Proclamation requires BLM to include transportation planning, and specifically road closures, in the management plan in order to protect the Monument objects. In order to comply with the Proclamation, BLM must commit to and prioritize the additional decommissioning and restoration that has already been identified in the PRMP/FEIS for roads and off-road motorized routes, as well as for illegitimate roads the agency has identified and for additional roads and routes that will assist in protecting Monument objects.

**B. Grazing Framework
(pp. 17-29 and Appendix A of Conservation Groups’ Comments, Appendix 1)**

The Proclamation requires the Secretary of the Interior to “study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural ecosystem dynamics.” The Proclamation also sets out the following requirements:

Should grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the Proclamation. FEIS at A-3.

In the FEIS, BLM sets out a “Framework for Making Future Decisions Regarding Livestock Grazing and Complying with the Presidential Proclamation” (FEIS at 80-83), which describes how the results of the grazing impacts study will be implemented. At the outset, the protesting parties note that, because this process provides “management direction,” guides “future actions” and requires “additional decision steps” (such as issuance or renewal of grazing leases or retirement of allotments) before activities having on-the-ground impacts can be carried out, the framework is a land use planning decision that is properly subject to protest. Further, this process conflicts with the direction of the Proclamation.

The framework correctly notes that the Livestock Impacts Study is the first step, but then requires interim steps of evaluating rangeland health standards, developing a range of livestock management alternatives that include current, modified and eliminated grazing practices and then considering compatibility prior to issuing/renewing leases or retiring allotments. These interim steps are not permitted by the Monument Proclamation, which requires that the study occur, then compatibility be determined and then the permits or leases be retired if a finding of incompatibility is made.

As written, the FEIS now improperly includes “modification” of grazing practices as an option **after** a determination of incompatibility is made and requires consideration of economic and social goals and values prior to determining appropriate treatment, stating:

- “To the extent the evaluation results determine that existing livestock grazing practices are ‘incompatible with protecting the objects of biological interest’ as defined in the presidential proclamation, the monument manager will determine whether or not practices can be modified in a manner that is economically and logistically feasible to achieve compatibility” (FEIS at 82).
- “If livestock grazing on specific allotments should be found ‘incompatible with protecting the objects of biological interest,’ and grazing systems cannot be modified to achieve compatibility, or if the BLM determines that the lands are best allocated to other purposes, those allotments would be retired” (FEIS at 82).
- “In circumstances where livestock grazing is found incompatible with the protection of monument resources, grazing practices would be modified or eliminated” (FEIS at 124).
- “Measurability is defined on a case-specific basis based upon the stated planning objectives (i.e., quantifiable, time specific), taking into account economic and social goals along with the biological and ecological capability of the area” (FEIS at I-5).
- “The cost of recovery must be weighed against the site’s potential ecological/economic value in establishing treatment priorities” (FEIS at I-8).

Similarly, as discussed in further detail in the protesting parties’ comments (Appendix 1), the FEIS improperly incorporates Rangeland Health Standards as a method for determining “incompatibility” with protection of Monument objects. This essentially substitutes a less stringent standard than that set out in the Proclamation and is inconsistent with the Proclamation. These noncompliant standards and considerations must be removed and a framework that is consistent with the Proclamation used instead.

**C. Thinning Approaches in Old Growth Emphasis Area (OGEA)
(pp. 4-15 of Conservation Groups’ Comments, Appendix 1)**

The Proclamation recognized the “old-growth habitat crucial to the threatened northern spotted owl and numerous other bird species.” FEIS at A-1. The OGEA is managed to protect this late-successional habitat and old-growth forest, or forests that are capable of

becoming so, focusing on addressing the effects of habitat fragmentation, fire exclusion, road density, noxious weeds, riparian areas and aquatic connectivity. FEIS at 37-38. However, some of the thinning approaches proposed for the OGEA do not comply with the Proclamation.

For instance, the DEIS included a general approach to retain trees larger than 20" dbh in order to protect large trees. DEIS at 209. The FEIS no longer includes a diameter guideline to trigger further consideration and instead emphasizes the need to thin and create openings of up to ¼-acre around large trees, without safeguards to ensure that the opening would not result in logging of other large, old-growth trees. FEIS at 51.

Further, the FEIS presents service contracts, timber sales and stewardship contracts as mechanisms for achieving thinning objectives. FEIS at 42. The Proclamation prohibits commercial timber harvest "except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives." FEIS at A-2. However, as discussed in further detail in the Conservation Groups' comments (Appendix 1), the use of stewardship contracts will potentially remove oversight needed to protect old-growth forest as required by the Proclamation. This potential is further exacerbated by the lack of clear guidelines on diameters for thinning and the emphasis on creating ¼-acre openings.

D. Water Quality
(pp. 25-26 and 64-66 of Conservation Groups' Comments, Appendix 1)

The Proclamation mentions the importance of the Jenny Creek area, stating that it "is a significant center of fresh water snail diversity, and is home to three endemic fish species, including a long isolated stock of redband trout." FEIS at A-1. Many other Monument objects are also dependent on acceptable water quality. As noted in the FEIS: "Water resources within and around the Cascade-Siskiyou National Monument (CSNM) are vital to sustaining the monument's plant and animal species." FEIS at 139. These resources include not only creeks, but also springs and seeps that provide important water sources and habitat.

The Proclamation also specifically reserves "subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established." FEIS at A-2. As discussed in more detail in the Conservation Groups' comments (Appendix 1), peak flows are necessary in order to achieve adequate sediment flushing rates needed for aquatic ecosystem integrity and natural ecosystem dynamics. Given that much of the water on Jenny, Keene and other creeks is diverted, flows are likely to be insufficient to achieve adequate flushing rates for sediments. The lack of adequate flushing rates will probably affect aquatic macro-invertebrates, some of which are necessary for maintaining viable populations of Proclamation-specific Jenny Creek redband trout and Jenny Creek sucker. BLM provides no data on flow rates or sediment deposition in the Monument, which is necessary for determining the water needed to comply with the Proclamation. Further, BLM must reduce the input of sediments in these streams in order to compensate for the lack of peak flows presented by existing diversion projects. Sediment levels can be reduced in the Monument by: (1) additional decommissioning of roads, particularly in the riparian reserves that still have high road densities (See, for example, Table 3-4, FEIS at 155, showing road densities of

2.87 miles/mi²); and (2) removal of livestock from stream corridors to allow bank stabilization to occur. However, BLM has not committed or even discussed taking these necessary actions.

In addition, without adequate flows, there may not be sufficient water needed to support the numerous springs and seeps in the Monument. The FEIS does not provide sufficient information on the location of springs and seeps and, in particular, those springs and seeps where pump chances and livestock ponds have disrupted hydrological processes. Once again, BLM has not committed to or even discussed taking actions needed to determine the amount of water required to sustain the Monument objects.

In addition, BLM notes that the Jenny Creek Watershed is identified as a Tier 1 Key Watershed under the Northwest Forest Plan; Tier 1 Key Watersheds “contribute directly to the conservation of at-risk fish species and have a high potential of being restored as part of a watershed restoration program.” FEIS at 110. Still, BLM identifies nine water quality limited streams on the Oregon Department of Environmental Quality’s (ODEQ) list under Section 303(d) of the Clean Water Act, including five in the Jenny Creek Watershed. However, the FEIS does not set out any specific management approaches to manage water quality in the Monument on an ongoing basis.

In discussing water quality management, BLM purports to comply with the Proclamation and the Clean Water Act by committing to “continue supporting ODEQ’s efforts to develop total maximum daily loads (TMDLs) and water quality management plans for water bodies with limited water quality within the CSNM.” FEIS at 112. But, as BLM also notes, ODEQ’s target date for developing TMDLs is December 31, 2005 and only after that would BLM begin developing its water quality restoration plans and use these plans, best management practices, the Northwest Forest Plan’s Aquatic Conservation Strategy (ACS) and monitoring to ensure that TMDL’s are being met on Monument lands. *Id.* In its comments on the DEIS, the U.S. Environmental Protection Agency, Region 10 (EPA) pointed out the need for BLM to incorporate interim direction on addressing waterbodies while ODEQ is developing TMDLs and to begin developing Water Quality Restoration plans to assist in long-term restoration. EPA Comments, p. 3-4. BLM has not done so.

Also, while BLM states that its management actions will be consistent with the ACS and identifies the Jenny Creek Watershed as a Tier 1 Key Watershed, there are no commitments to conducting the watershed analysis required prior to any management activities in Key Watersheds or to the obligation to give priority to restoration projects in this watershed. Northwest Forest Plan, Standards and Guidelines, p. C-7. Instead, the FEIS predicts that “gradual improvements to riparian areas on federal lands would improve aquatic habitat at those site-specific levels but would not improve the conditions at the watershed scale.” FEIS at 177. This statement reflects the plan’s failure to comply with either the Proclamation or the ACS by protecting the Monument objects, which are dependent upon the Jenny Creek Watershed and water quality in general, and to prioritize improving conditions at the watershed scale.

**E. Monitoring and Adaptive Management
(pp. 63-67 of Conservation Groups’ Comments, Appendix 1)**

The FEIS proposes to rely on monitoring and adaptive management, stating:

Monitoring is an essential component of natural resource management because it provides information on changes in resource use, conditions, processes, and trends. Monitoring is an integral component of the monument's adaptive management strategy (Appendix C), as it provides information on the effectiveness of management activities and strategies. (FEIS at 115).

This management approach sets a framework for how later decisions will be made and, as a result, is properly included in this protest as a land use planning decision. Despite the endorsement of monitoring and adaptive management as part of the management strategy for the Monument, the only monitoring identified in the PRMP is set out in Appendix J and, as described in detail in the protesting parties' comments (Appendix 1), these projects do not include any monitoring for many of the Monument objects identified in the Proclamation, such as butterflies and mollusks. In addition, the monitoring approach does not address peak flows for Keene, Jenny and other creeks, even though the Proclamation specifically directs BLM's attention to preserving "a quantity of water sufficient to fulfill the purposes for which this monument is established." FEIS at A-2. Finally, the FEIS indicates that BLM intends to rely on adaptive management to determine management approaches, such as the statement: "Knowledge gained from the pilot studies will contribute to an understanding of DEA ecosystem dynamics and improve future management through the adaptive management process." FEIS at 130. However, there are no details on how these studies will be structured or further plans developed, or what actions BLM will take if funding is insufficient to carry out this ambitious approach, thereby calling into question how these parts of the plan can fulfill BLM's obligations to protect Monument objects.

**F. Rights-of-Way and Communication Sites
(pp. 52-55 of Conservation Groups' Comments, Appendix 1)**

The Proclamation notes that the establishment of the Monument is subject to valid existing rights. However, BLM proposes to act in contravention of the Proclamation's requirement to manage to protect Monument objects by continuing to consider issuance of new rights-of-way and communication sites, continuing existing uses, expanding facilities and exempting certain uses from the overall minimization of new uses. FEIS at 119-120. These noncompliant management approaches are discussed in further detail in the Conservation Groups' comments (Appendix 1).

**G. Accommodation of Recreation
(pp. 45-50 of Conservation Groups' Comments, Appendix 1)**

The Monument Proclamation requires management to protect the Monument objects (which include plant and animal species and ecosystem continuity) and does not include any option to sacrifice these objects to protect or promote recreation opportunities. Motorized recreation (involving all of the negative impacts of roads identified by the Conservation Groups and BLM, as discussed above) would be especially incompatible with the required management

priorities. Nonetheless, BLM has improperly sought to accommodate motorized recreation in the PRMP/FEIS.

The “Primary Management Objectives for Recreation” include providing “opportunities for visitors to explore and discover different components of the CSNM” and balancing “recreational opportunities with the protection of monument resources.” FEIS at 99. The remainder of the management approach also contains specific activities that conflict with the Proclamation by seeking to fulfill these primary objectives, as described in further detail in the Conservation Groups’ comments (Appendix 1).

H. Snowmobile Trails

(pp. 47-48 of Conservation Groups’ Comments, Appendix 1).

BLM’s discussion of snowmobile “trails” violates the Proclamation. As noted above, the Proclamation prohibits off-road use of motorized and mechanized vehicles, limiting their use to roads. The DEIS properly discussed snowmobiles as a type of mechanized recreation that would be allowed on certain roads in designated areas. DEIS at 138. The definition of “trail” in the glossary refers to non-mechanized recreation such as hiking, equestrian and cross-country skiing. DEIS, Glossary at p. 8. However, in the FEIS, although there is a statement of allowing snowmobiles on designated open roads, there is also mention of “existing snowmobile trails.” FEIS at 104. The same term is used to refer to those roads designated for snowmobile use in Map 25. FEIS at 105. In addition, the definition of “trail,” while still referring to a transportation facility only for “non-mechanized types of use,” now improperly includes snowmobiles as an example of non-mechanized use on trails. The use of the term “trail” to refer to a route that may be used by mechanized vehicles, as well as the changed definition of this term, is inconsistent with the Proclamation’s prohibition of any use of mechanized vehicles off-road (in addition to inexplicably and improperly reclassifying snowmobiles as “non-mechanized”).

II. BLM HAS FAILED TO TAKE THE “HARD LOOK” AT POTENTIAL ENVIRONMENTAL CONSEQUENCES REQUIRED BY NEPA.

NEPA dictates that the BLM take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” Metcalf v. Daley, 214 F.3d 1135, 1151 (9th Cir. 2000); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, **whether direct, indirect, or cumulative.**” 40 C.F.R. § 1508.8. (emphasis added). The NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the **incremental impact of the action when added to other past, present, and reasonably foreseeable future actions** regardless of what agency (Federal or non-Federal) or person undertakes such other actions. **Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.**

40 C.F.R. § 1508.7. (emphasis added). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for entire area). The FEIS for the Cascade-Siskiyou National Monument is not based on adequate cumulative analysis and, consequently, does not comply with NEPA.

A. Road Analysis
(pp. 29-45 of Conservation Groups' Comments, Appendix 1)

As discussed above, BLM has acknowledged that its mileage estimates are conservative, because it has not included all private roads or non-inventoried roads. FEIS at 84. BLM has even estimated that “the actual road miles could be 20-40 percent more than what is in the BLM database.” FEIS at 143. By not including private roads or non-inventoried roads, BLM has failed to take into account the use of roads in the entire area that affects the Monument, which includes both the federal lands and the interspersed and surrounding private lands. Similarly, by not trying to account for the estimated 20-40 percent of additional mileage, BLM is ignoring the cumulative effects of the roads in the Monument on the Monument objects.

BLM has also failed to account for the cumulative impacts by ignoring the ongoing and potentially significant impacts of the major public highways that cross the Monument: Interstate-5, Highway 99, and Highway 66, which the Conservation Groups previously brought to BLM’s attention but are not discussed in the discussion of impacts from road.

Further, while the FEIS acknowledges that “Illegal cross-country use by motor vehicles remains a problem throughout the monument” (FEIS at 89) and that the Monument will receive “increased visitation” over time (FEIS at 98), the FEIS does not seek to account for the potential impacts. The cumulative impact analysis of the proposed road system for the Monument should account for illegal cross-country use (which is reasonably foreseeable from existing roads) and the potential increase in road use and concurrent illegal off-road vehicle use (also foreseeable given the long-term nature of this PRMP).

**B. Thinning in the OGEA
(pp. 4-11 of Conservation Groups' Comments, Appendix 1)**

In their comments (Appendix 1, pp. 4-7), the protesting parties identified a number of potential adverse effects that could result from the proposed thinning strategies for the OGEA, including:

- Soil resources (including possible compaction, nutrient loss, and increased erosion)
- Aquatic resources (including sedimentation and thermal effects)
- Spread of invasive weeds
- Loss of critical wildlife habitat (including explicit evaluation of the amount of time before thinned areas attain habitat objectives)

To the extent that BLM has failed to take these reasonably foreseeable effects into account in considering the impacts of the proposed thinning in the OGEA, BLM has failed to take NEPA's requisite hard look at the environmental consequences of its proposed action.

**C. Grazing
(pp. 22-29 of Conservation Groups' Comments, Appendix 1).**

In the DEIS, BLM deferred analysis of the impacts of grazing pending completion of the Livestock Impact Study required by the Proclamation. DEIS at 6. The Conservation Groups commented on the need to discuss grazing in the FEIS, as did the EPA in its comments on the DEIS (p. 1), stating:

In order to develop a comprehensive plan for the long-term management of the CSNM, livestock grazing cannot be reviewed and studied independently of other disciplines due to significant impacts grazing can potentially have on the environment. . . . To comply with the direction of the Presidential Proclamation to protect Monument resources, a comprehensive strategic RMP is dependent upon livestock grazing management practices being well integrated with the other elements of the RMP. . . . At a minimum, the EIS should identify a strategy that discloses current conditions related to present grazing practices and an assessment of future affects and consequences due to present grazing practices.

In response to these and other comments, BLM included certain decisions that could affect grazing, a framework that would be used for making future decisions once the Livestock Impacts Study was completed and an analysis of some of the impacts of existing grazing management on the Monument objects. FEIS at 13. However, despite this commitment and the requirements of NEPA, the FEIS does not realistically assess the impacts of grazing management.

For instance, BLM repeatedly acknowledges that livestock are a source of noxious weeds stating: "The congregation of cattle can result in increased levels of introduced and weedy species, including annual grasses." FEIS at 161. Other confirmations in the FEIS of the

association between cattle and weeds are detailed in the Conservation Groups' comments (Appendix 1, pp. 22-23). BLM nonetheless proposed to use grazing as a method for weed control (FEIS at 60; FEIS at G-4), apparently ignoring the unavoidable impacts of weed dispersal that can reasonably be expected from grazing and will counteract any potential benefits associated with this type of prescribed grazing.

Similarly, BLM acknowledges the potentially devastating impacts of livestock on riparian areas and seeps, stating: "Livestock grazing in riparian areas within the greater monument boundary would continue to cause bank disturbance, increase fine sediment, and reduce streamside vegetation beyond what is optimal for fish and other aquatic organisms." FEIS at 177. Other discussion in the FEIS of the damage caused to riparian areas and seeps by cattle grazing are detailed in the Conservation Groups' comments (Appendix 1, pp. 24-25). Despite the litany of adverse effects in the FEIS, BLM somehow concludes that "the cumulative effects of past, present, and reasonably foreseeable future management actions in the analysis area would likely result in a trend of improving water quality." FEIS at 176. Once again, BLM is clearly not engaging in the "hard look" at the reasonably foreseeable direct, indirect and cumulative impacts associated with livestock grazing required in order to comply with NEPA.

**D. Snowmobiles
(pp. 47-48 of Conservation Groups' Comments, Appendix 1).**

In their comments on the DEIS, the Conservation Groups sought confirmation that BLM had adequately reviewed scientific literature regarding the effects of snowmobiles on winter habitat of the species identified in the Monument proclamation through noise and intrusion. FEIS at 224-225. In response, BLM asserts simply that "Snowmobile use in the monument is unlikely to significantly impact wildlife species" (FEIS at 225) and no further detail is provided in the FEIS. As discussed in Conservation Groups' comments on the FEIS (Appendix 1, p. 46), there is considerable scientific support for the stress to wildlife resulting from snowmobiles. Further, while BLM states that it will monitor snowmobile use, and that "in the event of unacceptable resource damage, snowmobiles use could be limited or prohibited" (FEIS at 225), the FEIS does not reflect how this monitoring will document effects on wildlife species such as great gray owls and martens.

Accordingly, BLM's conclusion that the species in the Monument "tend to be highly mobile and are not impeded by roads or snowmobile trails as they move through this habitat, nor highly susceptible to the intermittent noise produced as snowmobiles pass through" (FEIS at 156) does not appear to be supported by the more thorough analysis required by NEPA. In addition, BLM's assessment of potential impacts from snowmobiles is limited to the proximity of species by the roads designated for snowmobile use. FEIS at 156. However, illegal off-road use of snowmobiles is foreseeable (just as it is with other motorized vehicles as acknowledged by BLM – FEIS at 89), but is never taken into account or even mentioned by BLM. Accordingly, BLM has failed to consider the reasonably foreseeable effects of off-road snowmobile use.

III. BLM HAS FAILED TO INSURE THE SCIENTIFIC INTEGRITY OF THE FEIS AND HAS BASED ITS PROPOSED MANAGEMENT ACTIONS ON INSUFFICIENT INFORMATION.

BLM must “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24. Information regarding reasonably foreseeable significant adverse impacts that is essential to a reasoned choice among alternatives shall be included in an EIS if the costs of obtaining it are not exorbitant. Id. § 1502.22(a). In addition, regarding the content of an environmental analysis, “The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

Courts have upheld these requirements, stating that the detailed environmental analysis must “utiliz[e] public comment and the best available scientific information.” *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1171-72 (10th Cir. 1999) (citing *Robertson v. Methow Valley Citizens’ Council*, 490 U.S. 332, 350 (1989); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1521-22 (10th Cir. 1992).

The existence of incomplete or unavailable scientific information concerning significant adverse environmental impacts triggers the requirements of 40 C.F.R. § 1502.22. This provision requires “the disclosure and analysis of the costs of uncertainty [and] the costs of proceeding without more and better information.” *Southern Oregon Citizens Against Toxic Sprays, Inc. v. Clark*, 720 F.2d 1475, 1478 (9th Cir. 1983). “On their face these regulations require an ordered process by an agency when it is proceeding in the face of uncertainty.” *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1244 (9th Cir. 1984).

This NEPA regulation imposes three mandatory obligations on the BLM in the face of scientific uncertainty: (1) a duty to disclose the scientific uncertainty; (2) a duty to complete independent research and gather information if no adequate information exists unless the costs are exorbitant or the means of obtaining the information are not known; and (3) a duty to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information, using a four-step process. Unless the costs are exorbitant or the means of obtaining the information are not known, the BLM must gather the information in studies or research. 40 C.F.R. § 1502.22.

Contrary to NEPA’s requirement, the FEIS implements management strategies that are not adequately supported by scientific data or sufficient information. In addition, the FEIS violates NEPA by failing to adequately disclose the extent to which “it is proceeding in the face of [substantial] scientific uncertainty” concerning the baseline conditions of numerous adversely impacted resources. *Save Our Ecosystem*, 747 F.2d 1240, 1244 (9th Cir. 1984). The FEIS also fails to disclose a sufficient plan for completing research and evaluating the potential impacts of proceeding in the absence of relevant information. The duty to conduct independent research when faced with incomplete or unavailable information insures that agencies comply with NEPA’s central purpose “to obviate the need for speculation by insuring that available data is gathered and analyzed prior to the implementation of the

proposed action.” Save Our Ecosystems at 1248-49. The Ninth Circuit has held that “Section 1502.22 clearly contemplated original research if necessary.” Id. at 1244.

**A. Grazing for Control of Noxious Weeds
(pp. 22-24 of Conservation Groups’ Comments, Appendix 1)**

In spite of the many admissions of weed spread caused by livestock and the fact that BLM states that these impacts will continue into the foreseeable future, the FEIS proposes to improve condition of stands that have a mixture of weeds and remnant native herbaceous species by “utilizing different grazing strategies to reduce disturbance.” FEIS at G-1,2. The FEIS references Appendix G as the basis for control of weeds in the OGEA (FEIS at 44) and also specifically includes “prescribed grazing” as a noxious weed treatment in discussing management of the DEA (FEIS at 60). BLM further indicates that “when applied correctly, prescribed grazing may reduce litter and rejuvenate bunchgrasses over large areas.” FEIS at G-4. However, scientific literature shows that cattle are generally not effective for controlling weeds (as discussed in Appendix A to the protesting parties’ comments on the FEIS). BLM does not provide any supporting scientific literature review or empirical evidence to show how and under what conditions cattle have been used effectively to control weeds. In addition, as discussed in protesting parties’ comments (Appendix 1, pp. 22-23), the FEIS contains numerous admissions that cattle actually serve to spread weeds.

Accordingly, BLM’s proposal to use grazing for weed suppression is contrary to existing scientific data and in violation of NEPA.

**B. Thinning in the OGEA
(pp. 4-15 of Conservation Groups’ Comments, Appendix 1)**

As discussed in detail in the Conservation Groups’ comments, the protesting parties have previously submitted substantial scientific support for the importance of retaining large trees and for using presumptive diameter guidelines. Appendix 1, pp. 7-11. In addition, the Conservation Groups’ comments discuss the lack of scientific support for using a thinning strategy relying on creating ¼-acre openings. Id. Further, BLM proposes to thin or otherwise reduce fuels on 100% of Habitat Type 3 lands (“young stands”) in the Monument, totaling 3,865 acres. Although most of these lands are broadly identified as even-aged plantations resulting from past timber management, some young unmanaged stands also appear to be included in this category, such as those stands in the Scotch Creek RNA and the Wilderness Study Area (Map 9, FEIS at 50). As discussed in the Conservation Groups’ comments, these areas may have been returned to an early successional stage by natural disturbance events. As the scientific studies cited in Conservation Groups’ comments show (Appendix 1, pp. 6-7), these naturally-occurring young stands would provide much higher values for wildlife than managed plantations, can provide important habitat for certain species and may in fact be relatively rare in the Monument landscape. Failure to distinguish between plantations and unmanaged young stands is likely to result in an inaccurate analysis with respect to the potential effects of thinning and other silvicultural treatments.

Therefore, BLM’s use of these management approaches in the OGEA does not meet NEPA’s requirement for scientific integrity.

C. Fire Regime Condition Class (FRCC)
(pp. 58-59 of Conservation Groups' Comments, Appendix 1)

The FEIS added the concept of FRCC into the fire hazard analysis, as a measure of relative departure from the historic fire regime. FEIS at E-6. In their comments, the protesting parties have identified a significant scientific basis for questioning the appropriateness of using this approach. For instance:

- The general FRCC approach has recently come under criticism from a number of fire and forest scientists as being fraught with scientific problems because there was likely a wider range in fire frequency than the median and mean estimates that are generally used in FRCC, and the range was probably important ecologically; and
- There are fundamental problems with management that is based on estimated historic range of variation during pre-settlement conditions, because understanding of those conditions is very imprecise and it is not realistic to presume that current climate would support these same dynamics.

In addition, because the FEIS does not explain how FRCC will be used to inform future management actions, it is even more difficult to evaluate how its use could further conflict with scientifically-accepted management practices. For instance, the FEIS sets out treatment priorities in the OGEA, which are summarized in Map 13. FEIS at 44-45, 54. At this point, condition classes have not yet been determined, but it is unclear whether they would then be used to change the priorities for treatment. Accordingly, wholesale adoption of FRCC for assessing and managing fire risk in the Monument is not supported by existing science and other data, and not compliant with NEPA.

D. Snowmobiles
(pp. 47-48 of Conservation Groups' Comments, Appendix 1)

As noted above, the FEIS concludes that there will be no significant impacts from snowmobiles, but does not provide any scientific support for its conclusions (even despite a specific request for confirmation of such data). This conclusion is not adequately supported and violates NEPA.

E. Monitoring and Adaptive Management
(pp. 63-67 of Conservation Groups' Comments, Appendix 1)

As described previously, the adaptive management and monitoring approach in the FEIS, set out primarily in Appendices C and J does note that baseline data are missing, primarily by focusing many of the monitoring projects on establishing baseline data. However, the FEIS does not meet the remainder of NEPA's requirements for full disclosure of lacking information, the commitment to further research and the potential impacts from not having data.

IV. BLM HAS NOT ADEQUATELY RESPONDED TO COMMENTS ON THE DEIS.

The protesting parties, as well as others, submitted detailed comments on the DEIS. Pursuant to NEPA, BLM “shall assess and consider comments” and respond in the FEIS by either: modifying alternatives, developing and evaluating alternatives not previously given serious consideration, supplementing or improving its study, making factual corrections, or explaining why the comments do not require a response. 40 C.F.R. § 1503.4(a). In addition, the FEIS should reflect critical views of others to whom copies of the DEIS were provided and respond to opposing views. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989). BLM’s response to comments does not meet these standards. Examples are provided below:

The Conservation Groups submitted a comment questioning whether BLM had thoroughly reviewed and considered the scientific literature regarding the effects of snowmobiles on winter habitat for relevant species in the Monument. FEIS at 224-225, REC-14. BLM did not directly respond to this comment by indicating whether and what literature had been reviewed.

In addition, as discussed above and in the Conservation Groups’ comments (Appendix 1), the protesting parties submitted extensive comments and scientific data regarding BLM’s approach to thinning in the OGEA. The FEIS does not discuss or respond to the scientific viewpoints included in these comments.

V. BLM HAS IMPROPERLY LIMITED THE RANGE OF ALTERNATIVES.

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999), citing Simmons v. United States Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” City of New York v. Department of Transp., 715 F.2d 732, 743 (2nd Cir. 1983). *See also*, Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002).

Courts have found that BLM’s analysis of alternatives was inadequate when it failed to fully analyze a less damaging alternative, and instead relied upon statements by the project applicant that such an alternative was not feasible. Southern Utah Wilderness Alliance v. Norton, 237 F.Supp.2d 48, 52-53 (D.D.C. 2002). In ruling that the Board’s decision should be remanded for further consideration of BLM’s finding, in a manner consistent with the Court’s findings, the Court held:

- “[I]n examining alternatives to the proposed action, an agency’s consideration of environmental concerns must be more than a pro formal [*sic*] ritual. Considering environmental costs means seriously considering alternative actions to avoid them.”
- “BLM failed to adequately study, develop, and consider appropriate alternatives to recommended courses of action” and “BLM’s hurried analysis was not the ‘hard look’ required by law.” *Id.* at 52-55 (internal citations omitted).

In the FEIS, BLM has failed to consider an acceptable range of alternatives, including those that would better avoid negative environmental consequences and would also comply with the Proclamation's directive to prioritize protection of Monument objects.

A. Road Closures
(pp. 29-45 of Conservation Groups' Comments, Appendix 1)

As discussed above, BLM declined to implement more extensive road closures, even where an additional 24 miles of "unnecessary" roads had been identified for later closure. The range of alternatives for road closure and decommissioning considered (as shown in the summary in Table 1-1, FEIS at 18) was relatively limited and did not seriously consider a substantially more environmentally protective approach. The range of mileage for the combined closed and decommissioned roads only varies by 6 miles. Similarly, there is only a range of 6 miles between the most and least protective alternative for mileage of roads left open. Given that: road density in the Monument exceeds levels that will negatively impact the Monument objects, the FEIS already acknowledges the wide range of ecological harms associated with roads in the Monument, and 24 miles of roads have been identified but not chosen for closure, the FEIS does not provide an acceptable range of alternatives.

B. Use of Wildland Fire
(pp. 59-63 of Conservation Groups' Comments, Appendix 1)

As discussed in the Conservation Groups' Comments, the FEIS acknowledges the importance of wildland fire as a key ecological process and that its suppression has significantly influenced the OGEA. FEIS at 209. Consistent with the goal of restoring and maintaining the ecological integrity of the Monument, as set out in the Proclamation, the protesting parties proposed that BLM consider use of wildland fire as a tool in the management of the Monument. In addition, they submitted detailed scientific support for their proposal. However, BLM has steadfastly refused to consider this tool, maintaining that a policy of active wildfire suppression is necessary, especially in light of the "mixed land ownership in the vicinity" of the Monument. FEIS at 209. Since the PRMP will ultimately be a long-term plan and also includes a commitment to acquire more lands in the vicinity of the Monument as appropriate, failing to even consider wildland fire as a tool that may be available during the life of the RMP (and only in proper situations) is overly restrictive and violates NEPA.

C. Grazing Management Framework
(pp. 17-29 and Appendix A of Conservation Groups' Comments, Appendix 1)

As noted above, the DEIS did not set out an approach to grazing management. Rather, in response to comments, BLM included certain decisions that could affect grazing, a framework that would be used for making future decisions once the Livestock Impacts Study was completed and an analysis of some of the impacts of existing grazing management on the Monument objects. FEIS at 13. The "Framework for Making Future Decisions Regarding Livestock Grazing and Complying with the Presidential Proclamation" (FEIS at 80-83) describes how the results of the grazing impacts study will be implemented. As discussed previously, the Framework, which provides "management direction," guides "future actions" and requires "additional decision steps" (such as issuance or renewal of grazing leases or

retirement of allotments) before activities having on-the-ground impacts can be carried out, is a land use planning decision that is properly subject to protest. Further, the Framework was presented for the first time in the FEIS without any alternatives and without any opportunity for public review and comment.

Therefore, in addition to conflicting with the direction of the Proclamation, BLM's incorporation of the Framework in the FEIS violates NEPA by not presenting a range of management alternatives and denying the public, as well as other federal, state, and local agencies, an opportunity to review and comment upon the changes to the DEIS, as well as the potential environmental consequences, *before* BLM simply issued it as final. *See*, 40 C.F.R §§ 1502.9(c)(1)(i), 1502.9(c)(4).

VI. BLM HAS FAILED TO ADEQUATELY DEFINE MITIGATION MEASURES.

NEPA requires that the effectiveness of mitigation measures be described and analyzed in detail in order to justify reliance on mitigation for reducing environmental impacts. NEPA requires that BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. Also, under NEPA, BLM's Finding of No Significant Impact ("FONSI") is lawful only if:

BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a **convincing case** that no significant impact will result therefrom or that any such **impact will be reduced to insignificance by the adoption of appropriate mitigation measures**. Defenders of Wildlife, 152 IBLA 1, 6 (2000) (citations omitted)(emphasis added).

In general, in order to show that mitigation will reduce environmental impacts to insignificant, BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated..." Communities, Inc. v. Busey, 956 F.2d 619, 626 (6th Cir. 1992).

Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." Northwest Indian Cemetery Protective Association v. Peterson, 764 F.2d 581, 588 (9th Cir. 1985), rev'd on other grounds 485 U.S. 439 (1988). NEPA also directs that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*; Davis v. Mineta, 302 F.3d 1104, 1125 (10th Cir. 2002).

In the FEIS, BLM relies on a monitoring and adaptive management program, as purportedly described in Appendices C and J, to ensure that there are not significant impacts on Monument objects. However, as discussed above and in the Conservation Groups' comments (Appendix 1, pp. 62-66), neither the pilot projects nor the adaptive management strategy provide sufficient detail or commitments as to how impacts will be measured, avoided or mitigated. Further, as noted by the Conservation Groups, there is no assurance that BLM will receive adequate funding to conduct this type of labor-intensive monitoring and management

and the FEIS does not address prioritizing of tasks if funding is inadequate or another approach to ensuring protection of Monument objects. Accordingly, this approach cannot provide the basis for concluding that there will not be significant impacts on Monument objects. A more definitive management approach is required in order to comply with NEPA.

VII. BLM HAS FAILED TO CONSIDER PROTECTION OF WILDERNESS VALUES.

The FEIS does not provide for identification and protection of the wilderness quality lands within the Cascade-Siskiyou National Monument. SMWC and others have submitted their Soda Mountain Wilderness proposal to BLM on more than one occasion, identifying approximately 23,000 acres of wildlands in the backcountry of the Cascade-Siskiyou National Monument that merit wilderness protection. In the DEIS, BLM acknowledged that the ongoing management of the Monument could create additional “wilderness opportunities,” because additional acreage would likely become suitable for management as wilderness, and committed to managing those acres as a Wilderness Study Area (WSA). DEIS at 237.

In the FEIS, BLM no longer addresses identification and protection of lands with wilderness qualities. BLM refers to the April 2003 settlement agreement in Utah v. Norton (the “Utah Settlement”), in which BLM abdicated its authority to designate any additional WSAs and concludes that “evaluation of additional lands for WSA status is outside the scope of this plan.” FEIS at 12. Even though the Utah Settlement occurred after the DEIS was issued, both existing law and current guidance provide for BLM to identify and protect lands with wilderness character in this planning process using other management tools.

As a preliminary matter, the protesting parties maintain that the Utah Settlement is invalid and will ultimately be overturned in pending litigation. As a result, BLM can and should continue to designate new WSAs within the Cascade-Siskiyou National Monument, including all of the lands within the Soda Mountain Wilderness proposal. Concurrently, BLM has other obligations to inventory for wilderness characteristics and manage wildlands to protect and enhance these characteristics.

FLPMA requires BLM to inventory its lands and their resources, “including outdoor recreation and scenic values” (43 U.S.C. § 1711(a)), which by definition includes wilderness character. FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. 43 U.S.C. § 1712(c)(4); 43 U.S.C. § 1712(c)(1). Through management plans, BLM can and should protect wilderness character and the many uses that wilderness character provides on the public lands through various management decisions, such as by excluding or limiting certain uses of the public lands. See 43 U.S.C. § 1712(e).

The April 2003 Utah Settlement does not affect BLM's obligation to value wilderness character or, according to BLM directives, the agency's ability to protect that character, including in the development of management alternatives. In fact, BLM has not only claimed that it can continue to protect wilderness values, but has also committed to doing so. Instruction Memoranda (IMs) 2003-274 and 2003-275, which formalize BLM's policies concerning wilderness study and consideration of wilderness characteristics in the wake of the

Utah Settlement, specifically provide that BLM can continue to inventory for and protect land “with wilderness characteristics,” such as naturalness, roadlessness or providing opportunities for solitude or primitive recreation, through the planning process. The IMs further provide for management that emphasizes “the protection of some or all of the wilderness characteristics as a priority,” even if this means prioritizing wilderness over other multiple uses.

As discussed in the Conservation Groups’ comments (Appendix 1, pp. 50-52), lands with wilderness characteristics also provide protection for Monument objects, such as valuable habitat for wildlife and plant life, watershed protection and overall healthy ecosystems, as well as helping to protect geological features and cultural resources. In order to comply with FLPMA and the Monument Proclamation, BLM is required to inventory and consider protection of lands with wilderness characteristics. Simply stating that considering additional lands for WSA designation is outside the scope of the plan improperly limits BLM’s legal obligations.

Conclusion and Relief Sought

The management decisions and analysis of impacts in the PRMP/FEIS are in error for the reasons stated in the full text of this protest, generally because the decisions would be based on failures to comply with the Monument Proclamation, NEPA and FLPMA, and because the decisions would be based on analyses and actions that violate the other legal requirements identified above in the full text of the protest. Because of these significant flaws, these provisions contrary to the law cannot be adopted.

To correct these problems the protesting parties request that BLM supplement the FEIS and/or issue a notice of significant change. In addition, the Conservation Groups specifically request that BLM:

- Revise the Grazing Management Framework, analysis of grazing impacts and proposed mitigation of those impacts to comply with the Proclamation and applicable scientific standards;
- Provide diameter guidelines and other appropriate safeguards to ensure protection of old-growth trees in thinning projects for the OGEA;
- Commit to identification, closure and restoration of unnecessary roads and off-road vehicle routes, including but not limited to those already identified as unnecessary or illegitimate;
- Prioritize watershed restoration and maintenance of water quality;
- Develop a definitive adaptive management and monitoring strategy;
- Clarify that the Monument Proclamation requires protection of Monument objects as a priority (including over motorized recreation and other motor vehicle access-related rights) and ensure consistency with the Proclamation in management approaches;
- Commit to inventory and protect lands with wilderness characteristics.

Sincerely,

Nada Culver
BLM Legal Analyst, The Wilderness Society
and on Behalf of All Protesting Parties Identified Above

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