

3. Dioxin: Failure to analyze the cumulative impacts relative to dioxin contamination of past and present herbicide spray programs on private lands adjacent to or near BLM lands in Oregon.

4. Dioxin: Failure to analyze the cumulative impacts relative to dioxin contamination of past and present herbicide spray programs on both BLM and private lands adjacent or near BLM lands in relationship to land swaps BLM has conducted in Oregon.

5. 2,4-D, Picloram, Triclopyr (replacement for 2,4,5-T), Clopyralid: Failure to analyze the cumulative impacts of the proposed herbicide spray program by the Bureau of Land Management (BLM) of adding more 2,4-D and other phenoxy herbicides to the Human Environment in Oregon.

6. 2,4-D, Picloram, Triclopyr (replacement for 2,4,5-T), Clopyralid : Failure to analyze the cumulative impacts relative to 2,4-D and other phenoxy herbicide contamination of past and present herbicide spray programs on BLM lands, conducted by BLM, or conducted by other agencies under contract with BLM or in cooperation with BLM.

7. 2,4-D, Picloram, Triclopyr (replacement for 2,4,5-T), Clopyralid : Failure to analyze the cumulative impacts relative to 2,4-D and other phenoxy herbicide contamination of past and present herbicide spray programs on private lands adjacent to or near BLM lands in Oregon.

8. 2,4-D, Picloram, Triclopyr (replacement for 2,4,5-T), Clopyralid: Failure to analyze the cumulative impacts relative to 2,4-D and other phenoxy herbicide contamination of past and present herbicide spray programs on both BLM and private lands adjacent or near BLM lands in relationship to land swaps BLM has conducted in Oregon.

B. Violations of NEPA - Missing and incomplete data:

1. **Dioxin:** Failure to collect data of dioxin contamination in herbicides used by the Bureau of Land Management in previous spray programs in Oregon on BLM lands, and

2. How much dioxin was released into the environment in Oregon from previous Bureau of Land Management's herbicide spray programs, and

3. How far off target dioxin contamination moved, and
4. How much has bio-accumulated, and
5. How much is in the current herbicide formulations proposed for use, and
6. How much has been released into the environment from other sources including from other herbicide uses past and present on adjacent or nearby lands, and/or lands swapped with BLM.

Discussion:

In the Record of Decision for the Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon, on page 27-28, BLM made the following statement about dioxin:

Dioxins were generally not discussed in the effects sections of the EIS because the Risk Assessments indicated that they do not represent a significant toxicological concern. Various dioxins can be formed during certain steps in the manufacture of various pesticides and other chemicals. Of the 18 herbicides discussed in the Final EIS, the EPA lists 2,4-D and dicamba as herbicides suspected of being contaminated with dioxins, and lists diuron as having the potential to become contaminated with dioxins if synthesized under conditions favoring dioxin formation (EPA 2006).¹² The EPA has prohibited or severely regulated processes that can lead to dioxin formation in recent years, particularly those leading to the formation of 2,3,7,8-TCDD, the dioxin of greatest toxicity and concern and the one most implicated in adverse health effects from 2,4,5-T and Agent Orange. Dioxin emissions in the United States have been significantly reduced in recent years, and according to a 2006 EPA report, by 2000 the leading source of dioxin emissions in the United States was backyard burning (EPA 2006). Other leading sources are wildfires, waste treatment, and various manufacturing. The presence (or non-presence) of dioxins in 2,4-D is discussed in Appendix 10, Comment and Response numbers 271 and 274 (FEIS:746-747). Dioxins are discussed in detail in the 2,4-D Risk Assessment in Appendix 8, which indicates the dioxin TCDD, the potent dioxin previously associated with 2,4,5-T and Agent Orange, has been present in some recent samples of 2,4-D at concentrations slightly above 1 part per billion. Two other dioxins, PCDD and PCDF, are often present in detectable quantities. The EPA conducted a detailed risk assessment for PCDD/PCDF contamination of 2,4-D and concluded that risks associated with such contamination were likely inconsequential (FEIS Appendix 8, 2,4-D Risk Assessment). Any human health or environmental risk from dioxins is reflected in the risk categories shown on Final EIS Tables 3-12 through 3-21.

BLM statements regarding dioxin may be found at page 300 of DEIS or 746 of FEIS, comment No. 271 and BLM's Response, and at page 301 of DEIS or 747 of FEIS comment No. 274 and BLM's Response.

Although BLM finds the risk of dioxin inconsequential, it is mentioned in the Consultation Letters from the National Marine Fisheries Service at page 126 of the ROD (the letter is called Attachment D and begins at page 81 and ends at page 155):

Habitat and food-web changes within the estuary, and other factors affecting salmon population structure and life histories, have altered the estuary's capacity to support juvenile salmon (Bottom et al. 2005, Fresh et al. 2005, NMFS 2005, NMFS 2006). Diking and filling activities that decrease the tidal prism and eliminate emergent and forested wetlands and floodplain habitats have likely reduced the estuary's salmon-rearing capacity. Moreover, water and sediment in the lower Columbia River and its tributaries have levels of toxic contaminants that are harmful to fish and wildlife (LCREP 2007). Contaminants of concern include dioxins and furans, heavy metals, polychlorinated biphenyls (PCBs) and organochlorine pesticides such as DDT. Simplification of the population structure and life-history diversity of salmon possibly is yet another important factor affecting juvenile salmon viability. Restoration of estuarine habitats, particularly diked emergent and forested wetlands, reduction of avian predation by terns, and flow manipulations to restore historical flow patterns might significantly enhance the estuary's productive capacity for salmon, although historical changes in population structure and salmon life histories may prevent salmon from making full use of the productive capacity of estuarine habitats, even in their presently altered state.

Recent studies by University of Queensland scientist Dr. Caroline Gaus, an environmental toxicologist with the National Research Institute for Environmental Toxicology (ENTOX), published in an article titled "**Toxicologist says urgent action needed on dioxins**" on December 7, 2010 reports that:

... pesticides with impurities used in high volumes represented a previously neglected but significant and concerning source of dioxins in the environment. They also posed a risk to the health of people handling pesticides, and to consumers.

"Some of these pesticides contained high concentrations of dioxins, comparable to those known from pesticides which are banned or restricted for use in most countries since the 1980s and 90s," she said.

Dioxins are linked to a range of cancers and are considered one of the most toxic man-made chemicals. They can cause adverse health effects in humans and wildlife including cancer, and act on development, reproduction and the endocrine system.

Please find a copy of the above referenced article as **Attachment 1**. This article may also be found at: <http://www.physorg.com/news/2010-12-toxicologist-urgent-action-dioxins.html>

The assertion of BLM that dioxins come from other sources, and that they are not found at such high rates as used to be found in Agent Orange, and that the BLM " *concluded that risks associated with such contamination were likely inconsequential (FEIS Appendix 8, 2,4-D Risk Assessment) DOES NOT relieve the BLM of their duty under NEPA 40 CFR Sec. 1502.22 Incomplete or unavailable information* to collect the data, and to apply analysis under *40 CFR Sec. 1508.7 Cumulative impact - before a decision is made.*

For its Risk Assessment of 2-4D, BLM relies on a 2005 Risk Assessment produced by the Forest Service, together with information from EPA's re-registration of this pesticide. It is well-established that agencies cannot avoid their duties under NEPA on the basis of EPA's pesticide registration decisions because of the different purposes of the statutes. Washington Toxics Coal. v. Environmental Protection Agency, 413 F. 3d 1024 (9th Cir. 2005); Northwest Coalition for Alternatives to Pesticides v. Lyng, 844 F.2d 588, 595 (9th Cir. 1988); Save our Ecosystems v. Clark, 747 F.2d 1240, 1248 (9th Cir. 1984); Oregon Environmental Council v. Kunzman, 714 F.2d 901, 905 (9th Cir. 1983).

Failure to consider cumulative impacts in sufficient detail to be "useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts" is a violation of NEPA. Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir.1999). City of Carmel-By-The-Sea v. U.S. Dept. of Transp., 123 F.3d 1142, at 1160 (9th Cir. 1998); Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, at 1379 (9th Cir. 1998); League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service, 549 F.3d 1211 (9th Cir. 2008) Here, as in Muckleshoot, the cumulative impact statement in the FEIS is "far too general and one-sided" to meet NEPA requirements.

Nor does it relieve BLM of its duties under *40 CFR § 1500.1 (b) to insure that: environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.*

Idaho Sporting Congress v. Thomas, 137 F.3d 1146 (9th Cir. 1998) held that NEPA requires that the public receive the underlying environmental data which formed the basis of opinion in the Environmental Impact Statement, including methodologies used and explicit references to scientific and other sources relied upon for conclusions. Here, the BLM relies on a risk assessment for the herbicide 2-4D that admits that information submitted to the U.S. EPA on formulations – including information on impurities, inerts, and manufacturing processes – cannot be released under FOIA and was not obtained for the risk assessment. Appendix 8, 2-4D Risk Assessment at 2-2. See also Ecology Center, Inc. v. Austin, 430 F.3d 1057 (9th Cir. 2005).

The BLM made little mention of the court cases that forced a halt to herbicide use on BLM lands in Oregon through injunctions. However, when one reads the injunctions and the cases that led up to the injunctions, it is clear that there were valid concerns about dioxins, toxic herbicides, health effects, and environmental damage.

The accounts of harm from dioxins, persistence of dioxins (extremely long half-life periods for various forms of dioxins), bio-accumulation of dioxins and other information countering the BLM's assertions that *"risks associated with such contamination were likely inconsequential"* are well-documented in No Margin of Safety by Carol Van Strum and Paul Merrell, herein attached.

Please read the **Court Orders** at VEGEIS_AR_01618.PDF to VEGEIS_AR_01741.PDF in the Appeal Records; **A Bitter Fog: Herbicides and Human Rights** by Carol Van Strum, 1983, herein provided as Reference Attachment I; and **No Margin of Safety** by Carol Van Strum and Paul Merrell,

1987, herein attached at Reference Attachment III.

C. INERTS: Violations of NEPA - 40 CFR Sec. **1502.22 Incomplete or unavailable information**: in this case NO INFORMATION! And Violations of **40 CFR § 1500.1 (b)**.

Discussion:

How can the decision-makers make good decisions when BLM does not even have any information about the "secret ingredients" mislabeled by the manufacturers as "inerts" to base a decision on? How can the public provide informed "*public scrutiny*" without ANY information to scrutinize? If the Risk Assessment was conducted without any information about the secret ingredients in herbicide formulations because the BLM couldn't request this information (under FOIA), then of what value is the resulting risk assessment? If BLM decision-makers made a decision based on no information, then the decision-makers must have made an **arbitrary and capricious decision!**

And furthermore, if the BLM and the Risk Assessment team had no information about the identify of the "secret ingredients" to base a decision on, then clearly the decision was made well in advance of Record of Decision, the Final EIS, and possibly even before the Draft EIS since the BLM totally ignored all the comments about "inerts" and "secret ingredients" in the FEIS and the ROD.

40 CFR § 1500.1 (b) to insure that: environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.- Ignored repeatedly.

Montana Wilderness Ass'n v. McAllister, 658 F. Supp. 2d 1249 (D. Mont. 2009) addressed an agency's obligations under 45 CFR § 1502.22, which requires not only the identification of missing information but also an assessment of its relevance and how expensive it might be to obtain. "The Forest Service merely observed that the information was unavailable, and then concluded that because it was

unavailable it was also unnecessary. . . . This was a mistaken course of conduct.” Id. 658 F. Supp. 2d at 1256.

“Requiring an agency to prepare an EIS serves two purposes. First, “[i]t ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” Dep’t of Transp. v. Public Citizen, 541 U.S. 752, 768, 124 S.Ct. 2204, 159 L.Ed.2d 60 (2004) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989)) (alteration in original). Second, “it `guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision.” Id. Thus, the agency must “articulate why [it has] settled upon a particular plan and what environmental harms (or benefits) [its] choice entails.” Highway J Citizens Group v. US Dept. of Transp., 656 F. Supp. 2d 868, at 884-885 (Dist. Court, ED Wis. 2009).

D. INERTS: Violations of NEPA - 40 CFR Sec. 1508.7 Cumulative impact

Discussion:

How can the BLM decision-makers assess cumulative impacts to the Human Environment when they do not even know what chemicals are in the formulas and what amounts that BLM plans to use; what chemicals were in the formulas the BLM used in the past in Oregon, and in what amounts; what chemicals were in the formulas used on adjacent and nearby lands by private land managers and in what amounts; whether these mystery chemical have synergistic effects; whether these mystery chemicals bioaccumulate; how persistent these mystery chemicals are, and so on.....???

See cases cited above.

E. Failure to provide information of high quality to the public and to the decision makers before decisions were made; Failure to comply with 40 CFR § 1500.1 (b):

Discussion:

How can the BLM decision-makers assess the quality of information when there is NO INFORMATION? How can the public scrutinize missing but necessary information? When the information is totally missing, totally not available to the public or the BLM decision-makers, totally not available to the decision-makers or the public before the decision was made, how can we trust the decision? Why should we?

How hard did the BLM try when they produced no information yet the Northwest Coalition to Alternatives to Pesticides (NCAP) was able through FOIA and persistence to come up with some information about some of the inerts in herbicide formulas that BLM plans to use? See **Attachment 2**, NCAP Inerts list for Herbicides.

The Bureau of Land Management is the caretaker of PUBLIC LANDS, our lands, yet they are willing to make an arbitrary and capricious decision without critical information, without providing that critical information to either the decision-makers or the public before the decision was made to let unidentified chemicals loose in the HUMAN ENVIRONMENT in total disregard for human rights, NEPA, and Federal Environmental Laws! The public is rightfully reluctant to approve plans full of "secrets", especially secrets about toxic chemicals that we are being forced to accept exposure to.

See attached tally of number of comments for and against herbicides. **Attachment 3**. Just tallying up the numbers of comments and signatures on those comments, 94.6 % of the comments that the BLM received were against herbicides. One can only assume that many of the groups signed onto comment letters also represented 100's and in many instances 1000's of members also opposed to herbicides. One can also be fairly sure that those people will not grant permission to BLM to expose

them to any amount of herbicides, whether or not the BLM makes the illegal claim that the herbicides are safe!

Please see attached Article "*Unidentified Inert Ingredients in Pesticides: Implications For Human and Environmental Health*" by Caroline Cox and Michael Sorgan, as **Attachment 4**.

F. Failure to provide high quality information on drift; AGDRIFT Model is inadequate

Please see **Attachment 5** - Comments submitted to EPA on July 29, 2010 from Stuart A. Turner regarding Agdrift model. Also see **Attachment 6** - a DVD of EPA tour of Western Oregon Coast Range on June 17, 2010 in relationship to the Pesticide Poisoning Victims United/The Pitchfork Rebellion EPA Petition Docket Number EPA-HQ-2010-0265 with presentation on drift by Stuart A. Turner, a forensic agronomist. **Attachment 7** is comments submitted by Jan Wroncy to EPA Petition, above named docket.

E. Failure to analyze how far ground spraying drifts or runoff water travels off-target.

Please read USCS Report at: http://or.water.usgs.gov/pubs_dir/Pdf/97-4268.pdf - Willamette Study from 1996. Also please see the list on OR-DEQ website of pesticides, contaminants such as dioxin, and other toxic substances that the Oregon Department of Environmental Quality has listed as Priority Persistent Pollutant (DEQ's definition of a priority persistent pollutant: A priority persistent pollutant is a substance that is toxic and either persists in the environment or accumulates in the tissues of humans, fish, wildlife or plants.) DEQ has developed a Priority Persistent Pollutant List of 118 pollutants that meet this definition. Many of the pesticides proposed for use by BLM and dioxins are on this list.

II. Other Federal Laws violated:

A. Violations of Federal Insecticide Fungicide and Rodenticide Act (FIFRA):

1. 40 CFR Section 156.10 (a)(5)(ix): Mislabeled, false claims of safety, Label violations

Discussion:

40 CFR Section 156.10(a)(5) False or misleading statements. Pursuant to section 2(q)(1)(A) of the Act, a pesticide or a device declared subject to the Act pursuant to Â§ 152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

(ix) Claims as to the safety of the pesticide or its ingredients, including statements such as "safe," "nonpoisonous," "noninjurious," "harmless," or "nontoxic to humans and pets" with or without such qualifying phrase as "when used as directed";

The DEIS and FEIS imply that the pesticides will do minimal damage, and are "safe" and that the public should just accept these risks. The DEIS even states that Eastern Oregon is more willing to accept the pesticides. All the potential exposures are non-consensual and unlawful testing of pesticides on humans in violation of the labels, and of FIFRA including the law cited below.

2. Violations of: 7 USCA Section 136j Unlawful acts [FIFRA section 12]: unlawful testing on humans.

7 USCA Section 136j Unlawful acts [FIFRA section 12]

(a)(2) It shall be unlawful for any person ---

(G) to use any registered pesticide in any manner inconsistent with its labeling

(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test

Discussion:

BLM claims the herbicides they propose to use are "safe" and then proceeds to analyze how much exposure we should be able to tolerate without noticeable effects through Risk Assessment

schemes. BLM has never fully informed us of the nature and purpose of this illegal, unethical test on humans, nor have they asked us for our voluntary permission!

B. Violations of Water Quality, Clean Water Act, NPDES Permit Requirements:

See Headwaters v. Talent Irrigation District, 243 F. 3d 526 (9th Cir. 2001); League of Wilderness Defenders v. Forsgren, 309 F.3d 1181 (9th Cir. 2002); Northwest Environmental Advocates v. U.S. Environmental Protection Agency, 537 F.3d 1006 (9th Cir. 2008); and recent ruling in 6th Circuit Court of Appeals regarding pesticides and NPDES permits (Cotton...)

See bogus statement regarding law in Congress that will let them off the hook at page ____ : BLM can not rely on a law that isn't (and wasn't) even passed by Congress yet.

III. Other issues raised:

A. Rural Interface - BLM Checkerboard ownership

Discussion:

Studies are not complete on how herbicides affect classes of people, such as the elderly, or pregnant women and fetuses. Tiny amount of poisons on developing fetuses could have life-long impacts. This is especially problematic in the checkerboard landownership pattern of western Oregon, where BLM only knows where the registered water users are when using herbicides, and is unaware of thousands of unregistered water users.

See arguments and comments by Barbara Kelley. Also **Attachment 8**, a representative map showing the checkerboard ownership in the Coast Range of Western Oregon showing the area of BLM ownership upon which several 1000's of people live, and in which any contamination of water would impact legal domestic and irrigation water rights, recreational waters, and the critical habitat of Coho Salmon in the Upper Lake Creek tributaries of the Siuslaw well as the South Fork of the Alsea.

ATTACHMENTS AND APPEAL RECORD

Arguments made by Appellants are based on comments submitted at the Draft Environmental Impact Statement, Final EIS, ROD, and scoping levels by Appellants, or incorporated by reference in their comments. Comments may be found in the Appeal Record supplied by the BLM (Schema No. 402e - 402g) and also in some cases attached to the Statement of Reasons, herein. Several reference books and documents have been provided as attachments as well. See Wroncy, et al comments - herein,

Attachment 9; Lisa Arkin for Oregon Toxics Alliance, herein, **Attachment 10**; Francis Eatherington for Cascadia Wildlands, herein, **Attachment 11**; Maya Gee, herein, **Attachment 12**; Day Owen for Pesticide Poisoning Victims United/The Pitchfork Rebellion, herein, **Attachment 13**.

INCORPORATION BY REFERENCE

In many sets of comments to the BLM, the Appellants "incorporated by reference" the comments submitted by other groups and individuals. Thus Appellants draw from the comments submitted by Appellants, and also all those comments we incorporated by reference. Because the BLM has informed the IBLA that it plans to give one Answer to all the appellants, we feel entitled to incorporate by reference all arguments presented by the other Appellants: Barbara Kelley (SOS), Phyllis Cribby (SOCATS), Katie Fite (Western Watershed Project and Center for Biological Diversity),

and Tom Buchele of the Pacific Environmental Advocacy Center for League of Wilderness Defenders/Blue Mountain Biodiversity Project and the National Environmental Defence Center.

STATEMENT OF STANDING

All individuals appealing this decision, and numerous members of the above mentioned groups recreate in the Bureau of Land Management lands in Oregon; do research on BLM lands; drive, hike or ride through BLM lands on BLM, state, or county roads; and/or live near, downstream from, downwind from, or otherwise have a legally cognizable interest in BLM lands at issue. All groups and individuals named as Appellants to Appeal No. IBLA-2011-0021 have submitted comments to the DEIS. All individuals appealing this ROD and groups appealing this ROD have a right to enjoy BLM lands without being poisoned. Because of the checkerboarding of many of BLM lands in Oregon, a large number of Oregon residents live adjacent to, or within a few hundred feet from, and/or are surrounded by BLM checkerboard ownership no more than one half mile from their residences. Because of the massive ownership by BLM of lands in Oregon, we could argue that every resident in Oregon has a legitimate interest in this ROD proposing to spray yearly all over Oregon. And because almost everyone's water flows from or through BLM land, we can legitimately assert we all have standing.

PRESERVATION ISSUES And ARGUMENTS

We, hereby, preserve all issues and arguments herein attached to this Statement of Reasons, or raised in our Notice of Appeal for Appeal Docket No. IBLA-2011-0021, and thereby preserve those issues and arguments for litigation.

REQUESTED RELIEF

1. We are requesting that the Record of Decision for the *Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon* be rescinded.
2. We are requesting a stay of the ROD and any use of herbicides in Oregon by the BLM, or any other parties under contract with the BLM, under this ROD and previous NEPA documents tiered to, or relied on granting herbicide use on BLM lands in Oregon.
3. A NEPA analysis of Alternative One - No Herbicides should ensue, and a new EIS emphasizing prevention of the spread of vegetation that is deemed non-native and invasive, non-chemical means of control of any plants warranting removal or containment, as well as an analysis of the determination of what plants need to be controlled, and why.