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Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy St.
Arlington, VA 22203

Oregon/Washington State BLM Director
PO Box 2965
Portland, OR 97208-2965

Regional Solicitor
Pacific Northwest Region
U.S. Department of Interior
805 SW Broadway #600
Portland, OR 97205-3346

APPEAL to Interior Board of Land Appeals, Office of the Secretary

Western Watersheds Project and Center for Biological Diversity, Appellants

This Appeal is of the Record of Decision signed by the Oregon/Washington BLM State Director Edward Shepherd on October 1, 2010 --- for the EIS, with the ROD entitled “Decision for BLM Vegetation Treatments Using Herbicides in Oregon”, Decision Record, EIS, ESA Consultation and all undergirding or associated documents.

This Decision, EIS, Consultation and all other documents are Appealed under BLM regulations 43 CFR Part 4 including Form 1842-1, and any other applicable regulations.

BACKGROUND

Oregon BLM tiers much of this flawed analysis in the 2010 EIS to the BLM’s 2007 *Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic EIS*, and its associated Risk Assessments. That EIS was accompanied by a two inch thick “PER” Report laying out BLM proposals to conduct massive alteration of native vegetation communities throughout the western U. S. through mowing, cutting, chipping, masticating, burning, and poisoning with a battery of herbicides. High levels of “treatment” were planned, and are now ongoing and/or foreseeable in Nevada, Oregon, Utah and Idaho in particular.

There was no NEPA analysis conducted in association with the PER report – despite the 2007 17 States Weed EIS reliance on the PER, and the PER’s laying out a massive vegetation manipulation and treatment program for the public lands.

Now here we are in 2010 and Oregon BLM adopts the 2007 chemicals and deficient analysis and Risk

Assessments of the 2007 17 States Weed EIS. Oregon likewise never analyzes the effects of the large-scale disturbance laid out in the PER planned for Oregon, and neighboring states. All direct, indirect and cumulative impacts of this ongoing and foreseeable massive disturbance and destruction to native vegetation communities and species dependent on them, and the tremendously increased herbicide use that will result, is once again not analyzed in the flawed Oregon effort.

The 2010 Oregon EIS greatly expands “treatments” in Oregon to include not just noxious or other non-native weeds – but also so that scorched earth herbicide use can be conducted on any and all **native** vegetation communities and types – with minimal analysis for why such actions might at all be necessary.

So instead of acting to preserve and protect native vegetation communities, this component of the EIS would actually enable their destruction – and likely resultant invasion of exotic species – requiring even more herbicide use. The Oregon EIS puts in place a cycle of endless addiction to toxic chemicals. The Oregon EIS merely mentions and provides no updated framework for Integrated Pest/Weed actions. BLM rarely if ever actually follows sound Integrated Pest/Weed Management in its management on public lands at present, anyway. This reality is not considered.

The Oregon EIS treats the humans, native wildlife, aquatic species and other inhabitants and biota of the lands east of the Cascades as **second class citizens and second class species**. BLM allows harmful long-lasting ground water infiltrating chemicals to be used east of the Cascades (Bromacil, Chlorsulfuron, Tebuthiuron), while banning their use to the west. It also allows **aerial application** of several hazardous chemicals east of the Cascades. The biocides somehow acceptable to be aerially applied in the human environment east of the Cascades but banned to the West are: 2,4-d, Clopyrid, Dicamba, Fluridone, Imazapic and Picloram. Under this greatly flawed EIS and ROD, all of these chemical biocides can be aerially applied east of the Cascades. Yet these chemicals are not allowed to be aerially applied in the west! Eastern lands, resident and biota are clearly sacrificed in this EIS.

Mitigation measures for herbicide use are inadequate and woefully fail to ameliorate and address impacts to Sage Grouse, Pygmy Rabbit, Bull Trout, native salmonids including ESA species, frogs, springsnails, rare plants, and many other important and imperiled species especially on the Eastside.

The ROD claims this is an Oregon-specific EIS – but it woefully fails to provide a necessary detailed analysis of the current status of soils, microbiotic crusts, water, watersheds, native plant and animal communities, degree of desertification, and important environmental stressors, and analyze the baseline habitats and species populations on Oregon BLM lands and surroundings. It is very important to understand all of this, and the differences between ecosystems found in Oregon. The existing burden of stresses on the ecosystem, in particular stressors on the more arid east side of the Cascades, is sorely lacking. A solid baseline of ecological conditions and relative scarcity and importance of resources – such as scarcity of abundant clean water, extensive highly disturbed trampled weed-prone soils resulting from high levels of BLM-permitted livestock use, or scarcity of ungrazed native plant communities and wildlife habitats – east of the Cascades is not provided.

The serious adverse effects of this EIS’s large-scale use of 17 biocides must be examined in light of the degree and severity of degradation to lands, waters and habitats, as well as the significant degree of imperilment of native biota, that is found on these public lands. This must be the basis, too, for developing a reasonable range of alternatives.

A reasonable range of alternatives must be developed that include emphasis on full and required Integrated Pest/Weed Management, and reductions, controls and in some cases prohibitions on disturbance activities permitted on BLM lands. Alternatives must also be developed that place ceilings on amounts of herbicides used, or remove uses altogether if thresholds are met.

A reader is not informed of how much herbicide use will occur, and where, during the time this EIS is in place, and there is no effort made to balance methods used.

Regarding vegetation treatments, the ROD provides no meaningful analysis of the severity of what will occur during the next two decades under this EIS. 2010 ROD at 9 states: “Nonherbicide methods such as chainsaw, grubbing, and prescribed fire) are used to control another 30,000 acres of invasive plants annually. In addition, native and other non-invasive vegetation management on BLM lands in Oregon generally exceeds 100,000 acres annually”. A reader is not informed if herbicide is currently sprayed on 50,000 acres – or 500,000 – and how much that is expected to increase over the next two decades – including if full-throttle vegetation manipulation occurs, as laid out in the NEPA-less PER.

The ROD is very unclear about just how much herbicide will be used especially in association with the massive number of “treatments” in the PER. We can find no upper limit. Nor any limit on how many applications, and total amount of chemicals that may be applied in the same watershed, on top of the same nesting population of Sage Grouse and migratory birds, on top of Pygmy Rabbits including with young in shallow natal burrows, close to human habitat interfaces, or anywhere.

Climate change is projected to amplify stresses on native biota, yet the adverse impacts of herbicide drift or effects to non-target species is not adequately considered.

The chemicals approved East of the Cascades even include the notorious crop-damaging Oust, as well as Tordon, and other extremely toxic and persistent chemicals known to be carcinogens. Tordon and others have long persistence, may bio-accumulate, and have other adverse effects.

BLM has added in Dicamba and diflufenzopyr into its Action. This can be aerially sprayed east of the Cascades. Yet Dicamba is known to cause eye problems. Literature shows that: *Dicamba is very irritating and corrosive and can cause severe and permanent damage to the eyes. Running water should be flushed through the eyes for at least 15 minutes if any dicamba is splashed into them. The eyelids may swell and the cornea may be cloudy for a week after dicamba is splashed in the eyes.*

So what happens to a Sage Grouse or Pygmy Rabbit that is exposed to this hazardous substance being aerially or ground applied east of the Cascades? Do they become blind? How will this affect population viability? Or what happens to a hiker’s dog who runs through vegetation covered with this hazardous substance? ROD at 9 says Dicamba and Dibenzoflur are to be used to treat “invasive plants” – so this very likely means native vegetation.

The ROD goes even further – allowing use of all of these biocides not just to kill “invasive plants”, but to kill “*any vegetation to meet safety and operation objectives in administrative sites, recreation sites, and rights-of-way*”. Then, those any plants can be killed if someone doesn’t want them there areas are listed as:

“Linear utility transmission systems, including multi-purpose corridors; BLM and other authorized road or railroad rights-of-way; oil and gas production or gas storage agreement areas and facilities; geothermal, wind, or solar energy production areas and facilities; pumped hydro-power production area and facilities; quarries and storage areas; fire suppression equipment sites and staging areas; cell phone, microwave, communication sites; mines; seed orchards and test sites; public purpose lease areas – airstrips, schools, parks; Wildlife and Wild Horse viewing areas; BLM offices; fire stations; campgrounds, picnic areas, OHV staging or parking, hanggliding areas boat facilities; and other administrative and operational sites needed for wildfire suppression, law enforcement, search and rescue, inventory, research, resource monitoring or other authorized administrative uses”. ROD at 9.

This essentially gives blanket immunity to industrial energy developers and BLM to spray at will – any time, any place they desire even if the plants are all native species. This has the potential for large-scale and repeated public exposure to these hazardous chemicals, as well as scorched earth applications by any energy company – including foreign wind developers or others - who finds it easier to kill and sterilize native vegetation on sites rather than take care to maintain it to protect U. S. waters, watersheds, and species habitats. The EIS is devoid of analysis of the additional sediment that will wash into streams, tons of topsoils that will be eroded and blown as dust (laden with toxins), crops that will be stunted or killed, fish poisoned, and children with asthma sickened as part of this action.

By extending use of these dangerous chemicals to blanket applications on healthy lands, and likely exposing the public and wildlife to multiple applications of chemicals in routine visits to or travels through public land – BLM poses a huge health risk to the public including chemically sensitive individuals who may routinely visit or live in rural areas near public lands to try to get away from chemical burdens in cities.

Plus, the laundry list of loose BMPs and measures in the ROD’s Attachments are greatly inadequate – for example –off-road herbicide spraying will be allowed – as staying on roads is required only “where feasible”. There is no definition of “feasible” or any other of hundreds of loose, uncertain and sketchy terms and provisions that are a completely inadequate control on use of these hazardous substances. BLM is not even required to inform the public what biocides are being used in areas – campgrounds, Wilderness, WSAs, NCAs, or anywhere else.

The human (residents and campers, hikers, scientists doing work on public lands, etc.), and animal inhabitants of the lands East of the Cascades face the grim prospect of waking up on a lovely spring morning and being exposed to clouds of unknown herbicides being aerially applied by foreign energy companies who control energy or other rights-of-ways.

BLM conducts minimal NEPA analysis for herbicide use on rights-of-way, admin sites, public areas, etc. These are wrongly viewed by the agency on a day to day basis as minimal effects – with no public notice or comment, and done under Categorical Exclusions or DNAs. So this deficient 2010 Oregon EIS is really the last and only place the public will be allowed any input over use of these hazardous chemicals before they are put into use on rights of way and other areas across public lands.

BLM is enabling the essential sterilization of soils and scorched earth vegetation killing for the primary benefit of industry on public lands, i.e. industry like foreign-owned gold mining concerns, gas pipeline magnates, or industrial wind or geothermal developers.

Chemicals are sold under brand names that already combine dicamba and dibenzoflur. Perhaps that is why BLM now authorizes both these hazardous substances. We believe that these combinations of herbicides – now sold under brand names like “Overdrive” and combined have not been adequately examined in Risk Assessments. From an EPA Report:

*In a subchronic study in rats, Wistar rats were fed test diets containing technical diflufenopyr . Histopathological findings were ... an increased incidence of foamy macrophages in the lungs in the 10,000 and 20,000 ppm groups and testicular atrophy in the 20,000 ppm group. Following the 4-week recovery period, the only treatment-related effects which showed **partial or no evidence of recovery were foamy macrophages in the lungs and testicular atrophy.***

There appear to be no limits placed on combining chemicals or overlapping use of chemicals on the same or nearby areas. Unknown witches brew type applications, degradates, surfactants and other chemicals will result. The BLM could mix Tordon with Tebuthiuron, or spray one and then the other, and spray at will. Or spray one, and then the other. Such mixes and overlapping uses of herbicides were never adequately tested in the flawed Risk Assessments of the 17 States EIS on which this Oregon effort relies.

The ROD even admits that it is allowing three chemicals where NMFS consultation has not been completed – 2, 4-d, diuron, troclopoyr BEE. Note: It is impossible to understand what the difference between Triclopoyr BEE and the Triclopoyr minus BEE listed in BLM Table 1 really is. This raises the specter, too, of derivatives and new additions - to chemicals being used - as they are developed and marketed by DOW, Monsanto and others – with new additions of toxins that are NOT covered under the Risk Assessments upon which BLM relies.

This EIS provides a basis for ramping up herbicide use across all BLM lands - and especially lands east of the Cascades. It comes at a time when many weeds are known to be developing resistance to many herbicides. BLM has failed to examine the risks of use of these chemicals so broadly over 15 million acres greatly increasing weed resistance to these herbicides. This could have a large-scale ecological as well as economic effect to agriculture – but it is completely unexamined. It also comes at a time when the burden of chemicals, often known carcinogens, already found in human and animal tissues and waterways is known to be high and a risk to human health.

The ROD claim that the lowest risk and most effective methods are chosen is not substantiated. There is no detailed analysis that demonstrates that the use of these chemicals – either singly or mixed or with multiple applications in the same area of the same or different chemicals - is “most effective”.

BLM has not reported on its prior use of all of these chemicals on all of its western public lands, and their effectiveness across its lands. It has not even reported on the effectiveness of the four chemicals it has been using under the long-standing injunction. It has not defined effectiveness, and reported on its near-universal abject failure to control invasive species no matter how much biocide is doused on the land – as long as high levels of livestock grazing or other disturbance is occurring. Case in point: Vale BLM’s Bully Creek allotment and the rampant livestock promoted whitetop and other noxious weed invasions. These terms of “lowest risk”, or “most effective” are not adequately defined, and great uncertainty exists over what is meant by them, and the serious risk posed to the environment by the chemical use, as well as great uncertainty in outcomes of use, especially in degraded public lands

settings like Bully Creek. Large amounts of chemicals have been sprayed on Bully Creek over the years – yet the weeds have spread to choke understories. The herbicide treatment has been completely and utterly ineffective in Bully Creek – because BLM fails to require any integrated or prudent management occurs. The Agency just sprays and walks away. Cattle then spread weed seeds in mud on hooves, in their guts, and in fur. Plus these same cattle stocked at high levels create large areas of soil, microbiotic crust and vegetation disturbances – where cattle-transported weed seeds thrive. See Belsky and Gelbard (2000).

We are concerned that some of these chemicals may have been used in eastern Oregon on BLM lands all along - through BLM getting county spray personnel or others to spray on BLM land – but may not have been authorized to be used on BLM lands in Oregon. Is that indeed the case? BLM has provided no summary of records of the chemicals used – where, when, how much, how effective, or detailed acres treated and results.

There is no basic analysis of the effectiveness of the herbicide burden already applied to or existing on public lands and waters and the biota that inhabit these environments – including from applications on private, state, or Forest Service lands.

BLM has records of vast areas east of the Cascades that the agency itself sprayed with 2,4-D, and other similar biocides in the 1950s, 1960s, and 1970s. The effects of use of these chemical herbicides especially on the arid lands east of the Cascades - where annual plant growth is so limited - has been so long-lasting that to this day stripes are evident in many areas of herbicided sagebrush. The still-visible stripes are of aerial herbicide strips where sagebrush eradication occurred several decades ago and the sagebrush has still not recovered. They are interspersed with the unsprayed sagebrush.

This was all done to promote livestock forage – yet the same chemicals are now being allowed under spurious claims they are needed to somehow “fix” degraded habitats and that actions won’t be done for livestock forage. The EIS provides no assurance that stocking on depleted lands won’t be perpetuated through killing woody plants.

The severe long-lasting effects of chemical herbicides that kill sagebrush and other woody vegetation, and to these fragile habitats, has not been addressed here. See for example, Knick and Connelly (2010) discussing the scale of past treatments, the USGS compilation of 25 articles on the plight of Sage Grouse and the unraveling ecosystems. This also includes articles by William Baker and other that describe the very long recovery times for native sagebrush communities such as those east of the Cascades. Wyoming big sagebrush or low can require 200 years to recover following fire. Recovery times following any disturbance, including herbicide can be very long-term, especially with continued damaging and harmful levels of livestock use or other disturbances.

BLM has not revealed all the previously treated areas on Oregon BLM lands under all the categories of vegetation killing it seeks to impose here (noxious weeds, “invasives”, or any plants BLM or developers do not like). The current ecological condition of these areas is also not provided.

The Vale Project is just one disastrous example of Oregon BLM’s history of use of chemical herbicides to kill sagebrush and other woody plants east of the Cascades. This project greatly altered and reduced sagebrush species’ habitat over several million acres through a combination of herbiciding prescribed fire, mowing, hacking and plowing of native plant communities. It also promoted alien

invasive cheatgrass and medusahead expansion into these treated lands that were subjected to relentless chronic livestock grazing use. So the bottom line is: The same aggressive disturbances to native plant communities that have caused so much degradation in the past are being aided and abetted by this flawed EIS that fails to adequately examine and put in place requirements and certainty that root causes of weeds or degraded conditions will be addressed.

There is no Baseline for understanding the condition of the Oregon public lands and Sage Grouse, Pygmy Rabbit and other sensitive and imperiled species habitats where BLM now would unleash its almost anything-goes latter day herbicide barrage on any native plants it deems “invasive”, or that any giant industrial developer does not want present on rights of way, energy sites, etc.

BLM provides no data or analysis on effectiveness of use of the four chemicals – or all the other chemicals that have been used across other BLM lands in western states. Weeds are exploding **everywhere** on BLM lands in the West. It is BLM’s failure to address the root causes of weed invasion that are helping cause the explosion. Now this EIS goes one step further, and is a throwback to the massive vegetation manipulation that caused s many of the present day weed problems in Oregon, especially East of the Cascades.

Any weed treatment/herbicide EIS must also address these root causes, and provide a reasonable degree of certainty that

As long as BLM keeps heaping all manner of disturbances across public lands without adequate safeguards, and allows extending or intensifying disturbance into still-native areas, and failing to require that Integrated Pest/Weed Management occur, this herbicide use will be largely futile in controlling the weed explosion.

STATEMENT OF REASONS

We Appeal the Oregon BLM Herbicide EIS due to:

- * The many serious flaws and deficiencies discussed in the Background Section above.
- * Use of/Tiering to the woefully deficient BLM 17 States Vegetation Treatment/Weed EIS, and its associated assessments, PER, and other documents.
- * Failure to adequately consider all direct, indirect and cumulative impacts of livestock grazing in promoting weed invasion, expansion and dominance.
- * Failure to adequately consider adverse effects on burrowing animals and insects.
- * Failure to adequately consider adverse effects of drift in air, soil, water, or through transport on contaminated vehicles or exposed biota.
- * Failure to provide adequate protective alternatives with protective measures and practices to limit or reduce drift. For example, the EIS allows aerial application, and application during periods with as high as 6 mph winds. Gusts often occur with herbicides moved into sensitive species habitats and non-target areas. In the arid eastern Cascade lands, this could result in species like Sage Grouse and Pygmy

Rabbit facing both death and contamination of food sources.

- * Failure to analyze larger distance off-site transport in some moisture and wind conditions.

- * Failure to adequately examine the failure of BLM to follow Integrated Pest Management in its management of the public lands. Domestic livestock permitted to graze on BLM land are routinely allowed to be trailed through, run on top of, and moved from weed infested pastures into uninfested pastures or other areas of public lands. This EIS could readily have required, to reduce the need for all this herbicide use, that livestock grazing or other permitted activities be prohibited in an areas with known weed infestations, or animals not be allowed to be moved from an infested area to a non-infested one as a Term and Condition of the BLM permit. That is an essential part of any Integrated Pest Strategy. This could readily be tied to a Weed Risk Assessment that either terminates the use due to a high risk of weed expansion and large amounts of herbicide use, or carefully regulates it.

- * Failure to be honest and upfront with the public about the minimal levels of environmental analysis related to herbicides that BLM conducts with nearly all activities it allows to occur on public lands.

In order to adopt this programmatic document, BLM should have reviewed how little it considers adverse effects of chemical use, and the threats this use poses to humans and ecosystems. For example, there are huge sums of tax dollars commonly spent on post-fire rehab.

BLM's policies ramrod all manner of exotic species in seedings, often accompanied by soil disturbances, and herbicide use through under CEs or DNAs that are issued Full Force and Effect following wildfire. So by the time any appeal can be heard, the chemical can be applied.

The level of NEPA analysis is greatly inadequate to address the plethora of adverse effects as BLM rushes to spend fire funds. Then, standards of recovery for grazed lands following fire and vegetation treatments are minimal – so BLM virtually ensures weed expansion following disturbances like fire when it heaps livestock grazing and trampling disturbances on top of fire, seeding, etc.

This illustrates one of the many failures of the EIS to address the effectiveness of herbicide use on BLM lands – especially in the context of current BLM grazing, mining, energy and other full-throttle exploitation of “resources” typically authorized on public lands.

- * Failure to adequately consider adverse ecological and health effects of chemicals used singly or in combination, or over time, on imperiled, candidate, sensitive and other important animal and plant species.

- * Failure to honestly address BLM's abandonment of current ecological science and managing and assessing the adverse effects of large herds of permitted domestic livestock grazing and trailing on public lands.

- * Failure to adequately address the broad range of existing and foreseeable cumulative impacts related to imposing transmission lines, renewable energy facilities (wind, geothermal), pumped or other hydropower, irrigation diversions, non-renewable energy, mining, gravel pits and other materials/minerals actions, road upgrading and maintenance, cell/communications sites, livestock stocking, use levels and facilities, vegetation “treatment” and fuels programs, livestock grazing and

livestock facilities. On many public lands these and other disturbances are often heaped one on top of the other on BLM lands, and the cumulative adverse effects are not addressed.

- * Failure to adequately protect public health, safety and well-being across all BLM lands – not just the limited measures provided for recreational sites.

- * Failure to adequately recognize current ecological science, and provide requirements that remaining uninfested vegetation communities must be managed to minimize soil, microbiotic crusts, and vegetation community disturbance.

- * Authorization of use of 17 herbicides, both alone or in unknown concentrations or variations without adequate analysis of adverse effects of chemicals, carriers, surfactants, breakdown products/degradates, accumulation potential in soils and waters, bioaccumulation potential, or cumulative effects.

- * Failure to examine the adverse effects of chemicals that are sprayed year after year on the same degraded lands. These effects range from salt accumulations to hazardous chemicals and degradates that essentially “poison” soils preventing recovery of any vegetation.

- * Failure to require any specific and adequate monitoring, or follow-up actions and ecological restoration of lands following dousing with chemicals. This whole EIS is predicated on the Spray and Walk Away mentality –as if weed presence and recurrence are somehow disconnected from causes of soil, vegetation disturbance on the public lands.

- * Failure to examine full adverse effects of runoff, and soil, air and water infiltration and transport – especially across the vast areas of degraded BLM lands such as areas of intensive livestock grazing-caused weed infestations. For example, if livestock grazing has churned soils on public lands into a dustbowl-like conditions, with only thistle patches and shallow-rooted annuals remaining – and thistles are then sprayed with herbicide, the loose, trampled livestock-churned soils, are much more likely to be transported in wind-blown soil to non-target and off-site areas.

Oregon BLM’s relegation of the public lands, human residents and users of public lands, as well as the native biota like Sage Grouse, Pygmy Rabbit, Spotted Frogs and Bull Trout east of the Cascades as some kind of “second class” entities. BLM allows herbicides and high risk-prone aerial application to be used east of the Cascades. Yet several of these same chemicals and aerial application of all chemicals is prohibited west of the Cascades. See Table 1, ROD at 11.

BLM’s Press Release for the ROD states: *The decision selects a modified version of Alternative 4 from the Final Environmental Impact Statement and adds 10 of the nationally-approved herbicides west of the Cascades and 13 herbicides east of the Cascades to the 4 approved herbicides already in use – for a grand total of 14 on the west side of the Cascades and 17 on the eastside of the Cascades.* If chemicals are too dangerous for use west of the cascades, they should be outlawed east of the Cascades, too. Table 1 shows chemicals are not allowed to be aerially applied west of the Cascades, yet in fact are allowed east of the Cascades. If chemicals can’t be aerially applied or used west of the Cascades, the human and biotic communities east of the Cascade should NOT be subject to aerial herbicide application, drift, and poisoning.

- * Failure of BLM to analyze the relative importance of all scarce waters east of the Cascades in

making its determination that they can be sacrificed to ground water-infiltrating chemicals. Under the biased scheme laid out here, Sage Grouse water sources and brood rearing areas, Bull Trout and Salmon/Steelhead habitats, and other areas may be polluted with chemicals – yet areas west of the Cascade – where water is not as precious – cannot be. What sense does this make?

- * Failure to establish an Alternative, Framework and Plan that requires use of non-chemical means as a first line of defense to control weeds - so that non-chemical methods can be assured, and that real integrated management can occur.
 - * Failure to require analysis of the basic existing “load” or level of pesticides and herbicides already in the aquatic or terrestrial environment before any additional application can occur in important, rare, candidate, sensitive and imperiled species habitats.
 - * Reliance on loose, uncertain, and highly inadequate supposed “mitigations”. Example, Table 1, Footnotes 3, 4, 8, use nebulous and completely uncertain terms. These terms are: “where practical limit ...”, “where feasible limit ...”, “typical rates”.... How is practical or feasible defined? There is no required threshold or trigger to limit use or use amounts, or use multiple times a year, or year after year, or multiple kinds of chemicals in or near the same area. There is also no requirement that significant changes be made in land management practices before further application may occur.
 - * Failure to require Specific Actions, and actually apply Integrated Management actions and requirements of undertakings – not just pay lip service to Integrated Weed Management. In allotment after allotment, year after year, we see cattle and domestic sheep run on top of weed infestations and then moved onto other areas of public lands. There is no requirement that any integrated management of any kind be put in place to protect public lands facing weed proliferation, or to limit livestock as vectors or causes of weeds
 - * Failure to establish a framework that requires BLM in all actions and allocations on the public lands to assess risks of actions/allocations and analyze how much herbicide of what type will be used as a result of the ecological disturbance that ensues.
- This is accompanied by the failure of the agency to set thresholds for risk and levels of herbicide use (either by amount or type, or both). These measures and limits or thresholds are necessary to develop required actions that may result in denial of project permitting, construction, right of way grants. This risk examination is also necessary to make large-scale changes or amendments in the use levels allowed by BLM. For example, if BLM is renewing a grazing permit and there are large infestations of several weed species, then BLM must examine the herbicide use burden under a range of alternatives - and act to terminate the permit if risk is too high, or effective control unlikely with continued livestock grazing disturbance.
- * Failure to fully present the adverse health effects of all the components and breakdown products of the chemicals that would be authorized –either individually – or if used in any and all combinations.
 - * Failure to provide readily recognized brand names with chemicals, and to limit various derivatives or additives to chemicals allowed. For example, WWP’s Fite gets headaches when smelling exposed to Round-up applications. Yet the names of all the products the herbicides are sold under aren’t provided in the ROD. Nearly all of the public looking at the chemical names has no idea just what is being

discussed in this EIS/RMP.

* Failure to analyze the degree and type of herbicide use, and the effects of all the use, that will occur if all the massive vegetation treatment disturbance laid out in the 17 States Vegetation Treatment/Weed EIS and its PER Report are carried out. Failure to analyze the adverse effects of all of these treatments on all components of the environment. The BLM 17 States EIS process forsook any analysis of the adverse effects of the massive, highly disturbing and weed-spawning disturbances to native vegetation communities that were laid out in a two inch thick PER Report. The four states where the most weed-promoting treatment “disturbance” was to occur were Nevada, Oregon, Utah and Idaho.

So now here we have an Oregon Weed EIS tiering its analysis to the 17 States EIS. Yet the Oregon EIS still does not analyze the degree and severity of the effects of all the herbicide use – and all the other adverse environmental effects – that will stem from the massive vegetation treatment linked to the 17 States EIS, as well as this Oregon EIS.

In fact, we suspect that the reason that the water-infiltrating toxic Tebuthiuron is “ok’d” for use east of the Cascades is because BLM seeks to poison large areas of sagebrush and western juniper habitats as “treatments” using this substance that kills woody vegetation. This practice has long been promoted by ranching interests who seek to remove woody vegetation so that livestock overstocking can occur on grasses under killed shrubs and trees. Despite the EIS claims that forage production is not a purpose of this use, it always has been a significant underlying reason for killing woody vegetation – especially in lands east of the cascades. If forage production is not the purpose of treatments, then BLM should remove permitted forage consumption/removal activities like livestock grazing from treated areas.

* Failure to provide a sound analysis of the positive benefits, outcomes or effectiveness of all the weed treatments that have already been conducted on BLM lands. Clearly, the system is broken and not working. Yet instead of fully analyzing how BLM is losing the battle with weeds – including through its seeming inability to ever say “No” to an resource-degrading activity on public lands, or the extreme difficulty in reducing chronic severe disturbance activities like livestock grazing in any significant amount. What is the total “load” of herbicides expected to be applied in grazed vs. ungrazed native wild lands? And what are the ecological and economic costs of permitting such disturbances?

* Failure to analyze combined effects of land use activities on BLM lands– grazing spawns fences and pipelines, and these spawn roads, and all of this spawns weeds – individually and collectively.

* Failure to analyze the serious risks associated with use of chemicals on public lands through “Cooperative Weed Districts/Projects” and other effects. We are increasingly seeing chemicals turned over to private interests for application by, near or on public lands. Do these entities exist in Oregon? How is use of type of chemical, and levels of application, and amount and type of chemical applied in any area controlled or regulated in this hand-over of weed killing to counties or ranchers?

* Failure to conduct a solid analysis of the adverse effects of carriers, leachates, breakdown products, additives, etc.– as well as other chemicals that may be sprayed onto, or drift into the land area.

* Failure to define “rangeland” vs. “forestland”. Tebuthiuron is promoted kill junipers east of the Cascades. These are trees growing in a forested condition. Yet – BLM is quite likely to ignore this and call these critical parts of the environment that ranchers have long sought to destroy “rangeland”.

* Failure to consider variability of chemical environmental persistence, effects and responses in complex environments. Researchers in some areas have found up to 98% of the glyphosate has remained present on sprayed leaves and branches after 90 days. Likewise, if the chemical is not able to be absorbed by a particular soil type, especially those low in organic matter, then it will remain active, often for months.

* Failure to prohibit use of Oust on public lands – following the Oust crop killing disaster that occurred in Idaho as part of one of BL’s ill-fated post-fire weed killing projects. Oust is sulfometuron methyl. All of these supposed germination inhibitors – like Plateau, too – may kill for only one year – then have to be re-applied year after year after year – like an addiction –if disturbance continues that promotes annual grasses. Please review the highly controversial application of Oust in Idaho, and the Court case and its Findings that followed.

* Failure to require effective monitoring of chemical impacts, off-site movement or drift, movement into water sources, killing of non-target vegetation etc. There are no post-application monitoring requirements to ensure compliance. There are no specific measures - or prohibitions on further use – if impacts are detected.

* Failure to adequately protect and warn the public of herbicide presence across public lands.

* Failure to adequately address and detail adverse effects of these chemicals on non-target vegetation.

* Failure to ensure compliance with conservation plans and promises for Sage Grouse and other imperiled species.

* Failure to conduct adequate ESA Consultation. The EIS lacks adequate Baseline information. The EIS fails to include significantly new or updated analysis of the adverse environmental effects of the raft of biocides it would authorize.

* Failure to adequately consider adverse impacts to microbiotic crusts – which help to prevent weeds, minimize soil erosion, and naturally absorb climate change gases as well.

* Failure to adequately consider the adverse impacts of climate change in understanding both the effects of the chemicals planned for use, as well as the sever effects of killing non-target vegetation, drift, pollution levels, impacts to imperiled and T&E species, etc. For example, as climate change occurs, temperatures of soil and water are expected to warm. Thus, aquatic biota may be faced with but stress of increased temperatures as well as herbicide pollution that combine to cause injury or mortality. Under climate change, the consequences of “drift” or killing non-target vegetation is likely to be greater in many instances because systems may have lower resiliency – i.e. less ability to naturally recover. Runoff is expected to be earlier and more extreme – this increases the potential for erosive events and movement and drift of herbicides into non-target areas and aquatic environments.

*The BLM has not adequately revealed just what it plans to treat. WHAT native vegetation does it consider “invasive”, a “pest”, etc. Where is a full and detailed analysis of the “habitats” and “habitat goals”? It is alarming that BLM is now targeting widespread use of herbicides to kill native species. There is no demonstrated Need for this – as hand cutting, mowing, flash burning, etc. ALL would

employ far more people and provide more jobs and certainty than dousing native vegetation with chemicals.

According to BLM's 2010 Weed EIS "Fact Sheet" states:

Differences in the number of herbicides available east and west of the Cascades are due to differences in native vegetation types and invasive plant occurrence, management objectives, environmental conditions, such as fire risk, and the prevalence of watercourses on the west side.

Yet there is no adequate science-based analysis of specific differences across all facets of the environment and environmental conditions. And in fact, the lands east of the Cascades are often much less resilient to disturbance and to chemical use or errors and drift in use, waters are much more precious and the ramifications of pollution likely greater, in the East. Use of persistent and extremely toxic substances like Tordon will also greatly reduce any resiliency of non-target vegetation to recover.

What is clearly occurring is that BLM has weed problems on its hands across the grazing, OHV and otherwise disturbed public lands to the east, and is flailing about trying throw chemicals on symptoms of chronic disturbance, rather address root causes.

* Failure to require adequate mitigation. BLM is trying to distract the public by claims of mitigation and toothless and uncertain BMP, without detailed analysis and current scientific evidence of the effectiveness of any chemicals to be used in a wild land environment with extremes of temperatures, winds, precipitation, disturbances, etc. We stress that nearly all chemical herbicide tests are conducted in placid and tame settings completely unlike the cattle-trampled eastside public lands).

- Failure to provide adequate protections in Attachment B – Conservation Measures for Special Status Species fails to address nesting birds – other migratory birds as well as Sage Grouse, Columbia Sharp-tailed Grouse and other species of concern. It fails to provide adequate protections for amphibians, known to be highly sensitive to these chemicals.
-

STATEMENT OF STANDING

Appellant WWP is a not-for-profit conservation organization that has more than 1200 members across the west, including within Oregon and who actively use and recreate on the vast affected area subject to herbicide use under the EIS. WWP has a particular interest in biodiversity and integrity of native ecosystems.

WWP's members including staff and member Katie Fite use the public lands affected by this BLM action for scientific, educational, spiritual, aesthetic and recreational (including camping, hiking, wildlife viewing, botanizing, bird-watching, sightseeing, photography) purposes. WWP has a special interest in public lands that provide habitat for native wildlife species and special status species, as well as the protection of native vegetation and healthy ecosystems. WWP has sought to protect the Sage Grouse, Pygmy Rabbit as well as aquatic species that are jeopardized by this action for many years. – including through ESA protections, commenting on agency processes, and bringing legal action to promote healthy lands and Integrated Weed controls rather than kneejerk herbicide uses that contaminate the environment and only address some symptoms of disturbance while failing to control

disturbance that is causing weeds.

WWP is adversely affected by the BLM's Oregon Herbicide EIS Decision. WWP's Fite and other members regularly visit Oregon lands such as the lands of the Vale Project specifically mentioned in this Appeal, at least annually and often 5-10 times in the course of a year for the past decade and even longer. WWP is involved in litigation in the Louse Canyon area of the Vale Project of BLM. WWP has sought to monitor and protect Sage Grouse and aquatic habitats in Bully Creek, a weed Hellhole that despite large amounts of herbicide use is overrun with weeds promoted by domestic livestock. This relentless futile annual application of herbicides jeopardizes the health and recreational enjoyment of our members who visit these lands.

This failure of BLM to really analyze the adverse impacts of the stench of herbicides the carcinogens they include, and their full spectrum of effects, imperils the scientific, professional, recreational aesthetic and other interests of WWP and our members, including member Fite. No one enjoys camping in an area of brown, dried weeds stinking of strong chemicals.

WWP Biodiversity Director and member Fite has already visited Vale BLM lands several times in 2010, as well as in all previous years for the past two decades, and plans to return again in late fall 2002, or summer 2011 at the latest. Lands visited by Fite in 2010 include the Three Forks access road area west of Jordan Valley, the Blue Mountain area north of McDermitt, the base of the Trout Creek Mountains east of Fields and Denio, and many other areas including lands near Adel and bordering Sheldon NWR. WWP's Fite and other staff and members are exposed to BLM's chemical use in traveling to and through public lands for work or recreational enjoyment. Our interest in seeing thriving, healthy native species and watersheds is harmed by BLM's overwhelming focus on chemical use and failure to apply mechanical weed controls and practice required integrated weed management. These failures result in weed proliferation.

WWP is also Interested Public in several grazing allotments, subject to the Spray and walk Away approach of the Oregon Weed EIS – Bully Creek, Louse Canyon, Jackies Butte, and several others.

APPEAL

BLM violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and the Federal Land Management and Policy Act, 43 U.S.C. §§ 1701 et. seq., and federal regulations in multiple respects through issuance of the Final Decision for the EIS, and associated actions.

BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including a detailed EIS for all major federal actions which may have a significant impact on the human environment; and site-specific and cumulative analysis of the likely environmental consequences of proposed actions. Such analysis must include consideration of a reasonable range of alternatives to a proposed action, and means to mitigate adverse impacts.

BLM violated NEPA in issuing the ROD; such NEPA violations include, but are not limited to:

- Failure to consider an adequate range of alternatives, including alternatives that address root causes of weeds, set thresholds or limits for herbicide use, etc.

- Conducting a decisionmaking process that never analyzes the severity and number and methods of the chemicals and treatments laid out in the BLM's 2007 17 States EIS and PER that this Oregon action is being applied and linked to.
 - Failure to take a "hard look" at the environmental consequences of the decision, including BLM's failure to adequately examine the cumulative impacts; BLM's failure to rely on Best Available Science and take an integrated approach to protecting the public lands and sensitive and imperiled species, as listed and described in the Statement of Reasons.
- BLM's arbitrary and irrational treatment of the lands, biota and inhabitants east of the Cascades as second class entities through the EIS's Decision to impose a battery of harmful chemicals and aerial herbiciding in this fragile arid landscape.

A. Requirements of the National Environmental Policy Act

At its most basic level, NEPA requires that the decisionmaker, as well as the public, be fully informed—i.e., “that environmental information is available to public officials and citizens before decisions are made and before action is taken.” 40 C.F.R. § 1500.1(b). NEPA ensures that the agency “will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). See also Blue Mtns., 161 F.3d at 1212 (agency analysis must be “fully informed and well-considered”).

As described in the Statement of Reasons, no adequate Baseline of information on condition of the lands and biota is provided. This is needed to ensure the public and resources are protected from serious harm.

Current ecological science related to soils, microbiotic crusts, climate change effects and its amplification of threats and stressors, adverse effects of livestock grazing, adverse impacts of the plethora of vegetation and other treatments BLM seeks to impose and other management actions is not provided.

The damaged and stressed condition of the habitats, and the highly vulnerable status of populations of the Sage Grouse, Pygmy Rabbit, Bull Trout, Steelhead and other are biota are not adequately described and impacts examined based on best available science.

Given all of these deficiencies, it is impossible for BLM to have lived up to its conservation policies, to protected sensitive species, and to have provided USFWS or NMFS with adequate info for full and fair consultation to have occurred, as well.

Critically important information and analysis is lacking – as described in the Statement of Reasons.

Whether there may be a significant impact on the environment requires consideration of two broad factors: “context” and “intensity.” 40 C.F.R. § 1508.27; 42 U.S.C. § 4332(2)(C). See also NPCA, 241 F.3d at 731. Context means the “significance of an action must be analyzed in several contexts such as society as a whole . . . , the affected region, the affected interests, and the locality.” 40 C.F.R. §

1508.27(a). Intensity indicates the “severity of impact,” which includes consideration of, *inter alia*, the unique characteristics of the geographic area; the degree to which the effects on the environment are likely to be highly controversial; the degree to which the possible effects on the environment are highly uncertain or involve unique or unknown risks; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Id. at § 1508.27(b).

This EIS fails to adequately examine either the context or intensity of the proposed use of large amounts of harmful chemicals in the environment, and the intrusive nature of their application.

BLM has not provided an adequate baseline, and current analysis and science to understand a myriad of harmful impacts to native wildlife, soils, vegetation, riparian areas including springs and seeps, cultural sites and recreational uses of the affected lands of its barrage of ground and aerial herbiciding, and fails to honestly assess risks and adverse potential outcomes.

BLM’s failure to honestly analyze and compare harmful or uncertain impacts of the proposed action on sensitive species such as Sage Grouse, Pygmy Rabbit, Bull Trout, rare amphibians or Steelhead requires one to speculate on the impacts. The purpose of NEPA, however, is to “obviate the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action.” Sierra Club v. U.S. Forest Serv., 843 F.2d 1190, 1195 (9th Cir. 1988). In failing to undertake any substantive analysis of the harmful impacts of the proposed actions on BLM-recognized sensitive species, BLM is in violation NEPA.

Cumulative impacts are defined under NEPA as “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions [of federal, state, and private actors].” 40 C.F.R. § 1508.7. Cumulative impacts may result “from individually minor but collectively significant actions taking place over a period of time.” Id.

Ninth Circuit cases have emphasized the importance of the NEPA requirement that agencies consider cumulative impacts. In Carmel-by-the-Sea v. U.S. Dep’t of Transp., 123 F.3d 1142, 1160-61 (9th Cir. 1997), the Ninth Circuit ordered the Federal Highway Administration to re-evaluate its cumulative impacts analysis for a highway project in California, stating: “The [EIS] fails both to catalogue adequately past projects in the area, and to provide useful analysis of the cumulative impact of past, present and future projects and the [proposed project].” The Court also noted that it was the federal agencies’ burden to “properly describe other area projects or detail the cumulative impacts of these projects;” plaintiffs were not required to come forward with a list of the projects the agency had failed to consider. Id. at 1161. The Ninth Circuit has recently stated:

To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service’s decisions, can be assured that the Forest Service provided the hard look that it is required to provide.

See also Neighbors of Cuddy Mountain v. U.S Forest Service, 137 F.3d 1372, 1379 (9th Cir. 1998). See also Blue Mtn., 161 F.3d at 1214-16; Muckleshoot, 177 F.3d at 811; Save the Yaak Comm. V. Block, 840 F.2d 714, 720 (9th Cir. 1988) (stating that when an federal agency projects have a potential for cumulative harm an “assessment of connected actions is necessary even if the impact of the proposed

action is not significant.”).

BLM never assesses the direct, indirect and cumulative impacts of investing millions of dollars in herbicides year after year, the burden of contamination of lands, waters and habitats from all the private, state and Forest Service herbicide use, or the burden of chemical contamination that ecosystems, species and human residents already face, and many other such impacts.

BLM never considers the additional stresses from climate change, grazing, energy projects, veg treatment, roading, and other disturbances to rare species, and the health effects or unintended habitat losses or reductions caused by this action. Many species like Sage Grouse and rare amphibians already suffer a barrage of disturbances and habitat degradation – some of it caused by BLM’s past treatments.

To comply with NEPA, the agency must show that it has taken a “hard look” at the environmental impacts of the proposed action. See Blue Mtn., 161 F.3d at 1211. The EA and FONSI, however, evince only a cursory review of only some relevant environmental concerns – not a “hard look.”

BLM fails to adequately examine the impacts these chemicals, of its Spray and Walk Away approach, and other actions on the public lands.

Overwhelming scientific literature ties livestock grazing to erosion and destruction of soil crusts. Even under moderate stocking rates, grazing substantially contributes to the deterioration of soil stability in deserts (Warren et al. 1985), thus leading to increased soil erosion. Soil erosion is further exacerbated by increased surface runoff triggered by loss of vegetative cover and litter (Ellison 1960), both of which have been shown by numerous studies to be reduced by livestock grazing. Numerous studies have observed severe erosion in the western United States when comparing heavily grazed areas to ungrazed sites (e.g. Cottam and Evans 1945, Gardner 1950 Lusby 1979, and Kauffman et al. 1983). Furthermore, there are a number of extensive literature reviews on this topic that describe the indisputable impact of livestock grazing on soil stability and erosion (see Gifford and Hawkins 1978, Fleischner 1994, Trimble and Mendel 1995, and Jones 2000). Under such degraded conditions, weeds are very likely to proliferate. See Belsky and Gelbard (2000). The livestock themselves are vectors that spread the weeds in the lands that they have degraded.

So the likelihood of effectiveness, as well as the degree and severity risks of using these chemicals, and the likelihood of their off-site transport into aquatic systems, or essential habitats, cannot be adequately understood until BLM provides sound analysis of grazing disturbance and other disturbance effects on the Oregon public lands. The absurdity of applying herbicides year after year to the ever-expanding livestock-caused weed infestations like in Bully Creek in eastern Oregon also cannot be understood unless BLM fully reveals and acts to improve its failure to conduct and require integrated management or require that passive restoration occur.

BLM has violated NEPA’s requirement that federal agencies take a “hard look” at the ecological implications of its actions. See Friends of the Clearwater, 222 F.3d at 557, quoting Marsh, 490 U.S. at 374. See also Hahn, slip op. at 9 (holding that 9th Circuit precedent “require[s] that the hard look be documented so that the Court and the public can be sure that in reviewing the agency’s decision, they know precisely what the agency has before it when it reached its decision.”); See National Parks Conservation Assoc. v. Babbitt, 241 F.3d 722 (9th Cir. 2001)(“NPCA”); Metcalf v. Daley, 214 F.3d 1135 (9th Cir. 2000); Muckleshoot Indian Tribe v. USFS, 177 F.3d 800 (9th Cir. 1999); Blue Mtn.

Biodiversity v. Blackwood, 161 F.3d 1207 (9th Cir. 1998), cert. denied 527 U.S. 1003 (1999); Idaho Sporting Congress v. Thomas, 137 F.3d 1146 (9th Cir. 1998) (all reversing EAs).

The BLM fails to consider a reasonable range of alternatives to the proposed action. Another basic requirement of NEPA is that federal agencies must consider a reasonable range of alternative actions. See 42 U.S.C. § 4332(2)(c)(iii); 40 C.F.R. § 1502.14; Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1988). This requirement applies to EAs as well as EISs. Id. See also 40 C.F.R. § 1508.9(b). Alternatives are indeed the “heart” of the document. See 40 C.F.R. § 1502.14. The range of alternatives should “sharply [define] the issues and [provide] a clear basis for choice among options by the decisionmaker and the public.” Id. See also California v. Block, 690 F.2d 753, 765-69 (9th Cir. 1982) (reversing EIS for failure to address reasonable range of alternatives). A federal agency must examine every reasonable alternative in light of the purpose and need of the proposed action.” Idaho Conservation League v. Mumma, 956 F.2d 1508 (9th Cir. 1992). “A viable but unexamined alternative renders [the environmental analysis] inadequate.” Muckleshoot, 177 F.3d at 814, quoting Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985).

BLM provides no sound analysis of the effectiveness of past actions or current science related to Sage Grouse and other species and habitat concerns. See Portland Audubon Society v. Espy, 998 F.2d 699, 703-04 (9th Cir. 1993) (overturning decision which “rests on stale scientific evidence, incomplete discussion of environmental effects . . . and false assumptions”); Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1151 (9th Cir. 1998) (stating that the scientific information upon which an agency relies must be of “high quality because accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”)(internal quotations omitted).

BLM VIOLATED THE FEDERAL LAND MANAGEMENT AND POLICY ACT

BLM is violating the Federal Land Management and Policy Act in failing to undertake an appropriate analysis of competing resource values to ensure that public lands are managed in the manner that will best meet the present and future needs of the American people, and, further, in authorizing actions that are flatly inconsistent with policies for protecting sensitive and imperiled species, and watersheds and water quality, as well as human health and well-being. BLM’s violations are listed above in the Statement of Reasons.

BLM fails to provide any analysis or monitoring of the ineffectiveness of its past actions— before allowing more of the same.

FLPMA is the basic “organic act” for management of the public lands under BLM’s administration. Under FLPMA Section 302(a), the Secretary of the Department of the Interior must “manage the public lands under principles of multiple use and sustained yield.” 43 U.S.C. § 1732(a). “Multiple use” means

the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; * * * the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and

natural scenic, scientific and historical values; * * * with consideration given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or greatest unit production.

43 U.S.C. § 1702(c). In other words, FLPMA's multiple-use mandate requires that BLM balance competing resource values to ensure that public lands are managed under the “multiple use” mandate. National Wildlife Federation v. BLM (“Combwash”), 140 IBLA 86 (1997), quoting 43 U.S.C. § 1702(c). BLM undertakes this responsibility by engaging in a reasoned and informed decisionmaking process, and that “process must show that BLM has balanced competing resource values to ensure that the public lands in [Allotments] are managed in the manner that will best meet the present and future needs of the American people.” Id., at 101.

This EIS has many violations of FLPMA. There is no valid detailed science-based analysis provided for why the public lands east of the Cascades are treated as sacrifice areas where a battery of toxic herbicides and aerial application can occur – whereas on the more “civilized” Eastside – much more care and much precautionary measures are used.

BLM Failed to Balance Competing Values Prior to Authorizing More of The Very Same Actions That Have Led to Continued Ecological Losses

BLM violated FLPMA by failing to engage in any reasoned and informed decisionmaking over the array of actions to be taken. See Statement of Reason. BLM’s obligations under FLPMA are clear: prior to authorizing these chemicals and manner of use, BLM must balance competing resource values to ensure that public lands are managed in the manner “that will best meet the present and future needs of the American people.” National Wildlife Federation v. BLM, 140 IBLA 86 (1997), quoting 43 U.S.C. § 1702(c). The Combwash case is instructive in understanding BLM’s multiple use obligations under FLPMA.

In *Comb Wash*, Appellants contended that in issuing a decision, BLM violated FLPMA by failing to balance competing resource values to ensure that the public lands were managed under the “multiple use, sustained yield” rubric. BLM “failed to engage in any reasoned or informed decisionmaking process concerning grazing in the . . . allotment.” See id., at 101. On appeal, the Interior Board of Land Appeals affirmed the decision, and held that the decisionmaking process for determining whether to allow grazing on public lands “must show that BLM has balanced competing resource values to ensure that the public lands . . . are managed in the manner that will best meet the present and future needs of the American people.” Id.

Combwash is directly on point, here. Nowhere has BLM balanced competing values in its Spray and Walk Away EIS. In fact, the entire decision and supporting NEPA documentation is predicated on the fact that spraying is the primary and best method of control, and repeating the same thing year after year without requiring changes in extractive uses like weed-promoting heavy grazing is somehow in the public interest. BLM has provided no framework for terminating an activity or denying permitting for activities known to cause weed proliferation that is highly unlikely to be controlled – just for pouring on more chemicals. It is precisely this type of pre-ordained decisionmaking authorizing grazing that Combwash found violated the “multiple use” requirements of FLPMA.

In the absence of any reasoned and informed decisionmaking, BLM cannot show that it has

meet FLPMA's obligation to manage the public lands under the "multiple use" mandate. See Combwash.

ENDANGERED SPECIES ACT VIOLATIONS

Violations of the ESA

As described in the SOR above, BLM has violated the ESA through relying on inadequate baseline info and analysis, inadequate risk assessments, and failure to incorporate current ecological science into understanding adverse effects of its Spray and Walk Away Oregon Weed EIS.

PETITION FOR STAY

Pursuant to 43 C.F.R. § 4.21, WWP and CBD Petition for Stay of the challenged decisions. WWP hereby request the Board of Land Appeals, Office of the Secretary of the Interior, to stay this contested decision until this Appeal is resolved.

I. Our Interest Will Be Harmed If This Decision is Not Stayed

Our members, who actively recreate on these portions of the public lands of the United States, will be irreparably harmed if this Final Decision DNA for the Oregon BLM landscape is permitted to proceed as proposed. The implementation of this Decision will result in a violation of federal laws and regulations as documented in the Statement of Reasons (incorporated herein by reference) and the loss of the ability of our members to experience the land in question without ongoing degradation of important public resources and values. Further, if this flawed decision is implemented the losses to the public will be significant, and may be long-term and irreversible. Sage Grouse, Pygmy Rabbit, Bull Trout, Steelhead habitats and other populations are likely to be further stressed, habitat components polluted, and species extirpated.

The Statement of Standing provides evidence of the likelihood of exposure of WWP's and CBD's staff and members to chemicals while enjoying, recreating, working, or driving through the public lands—ranging from aerial or other herbicide use and drift to a battery of harmful chemicals, breakdown products, adjuvants, and other hazards.

The direct result of the issuance of a Stay on this Decision will be the prevention of direct harm to Appellants because of the violation of legal statutes of the United States on which Appellants rely if the decisions are permitted to take effect.

On the other hand, the relative harm to the BLM of the issuance of a Stay as requested is minimal. If a Stay is granted, BLM would have time to actually lay out a science-based and protective set of actions to start the 15 million acres of Oregon BLM lands of on the road to recovery through integrated weed and vegetation management actions – rather than the EIS's Spray and Walk Away approach.

The BLM has enough information available to understand the severity of the disturbances that it allows or permits, (which it has failed to provide in this process) to already know much of what needs to be

done to start improving conditions and reducing the root cause of weeds, and large-scale need for herbicide use. But due to relentless pressure from the public lands ranching industry, OHV use, the energy and mining industry, and others, BLM refuses to act.

A Stay will allow BLM to undertake environmental analysis required under NEPA and FLPMA, and, thereby, insulate itself from liability. Granting a Stay would allow BLM to actually apply and put in place necessary protective measures for the environment, including the public that uses these lands and that will be exposed to these chemicals in chronically disturbed landscapes year after year – in soils, air, water, - and thus through contact, inhalation, and potentially even ingestion.

II. WWP Will Succeed on the Merits of Its Appeal

The IBLA decision in National Wildlife Fed. v. Bureau of Land Management, 140 IBLA 85 (1997), squarely holds, BLM's failure to balance competing resource values prior to authorizing grazing on federal public lands violates FLPMA. Second, this Board has consistently held that BLM must fully and strictly comply with its mandatory duty to act in a manner consistent with the governing land use plan. See, e.g. Jenott Mining Corp., 134 IBLA 191, 194 (1995); Uintah Mountain Club, 112 IBLA 287, 291 (1990); Marvin Hutchings v. BLM, 116 IBLA 55, 62 (1990); Southern Utah Wilderness Alliance, 111 IBLA 207, 210-211 (1989). WWP has established (1) that Oregon BLM has failed to undertake any reasoned and informed decisionmaking over this battery of harmful actions, and (2) that BLM has authorized actions that are plainly inconsistent with conservation of public lands and waters.

Additionally, WWP and CBD have firmly established that BLM has violated NEPA by (1) failing to adequately examine the degree and severity of the adverse effects of its actions –especially in the second class citizen sacrifice area of the Eastside, and the whole battery of harmful actions as described in the Statement of Reasons (2) failing to examine the cumulative impacts of this decision and similar past actions that have only worsened the weed problems on BLM lands across the western U.S.

III. Absent a Stay, Irreparable Harm Will Occur to the Public Lands of Oregon and Neighboring States

The harm created by the implementation of the Decision is irreparable in that it will permit ongoing degradation of public resources. Such environmental loss is by definition irreparable. According to BLM's own information and current ecological science, weeds cause significant impact to wildlife, watersheds and other important values of the public lands – from Sage Grouse to Bull Trout to scenic vistas and clean air and water and untrammelled wild lands. Yet BLM relies on its long-time ground-losing Spray and Walk Away approach, rather than requiring Integrated Treatments. Plus, the heavy reliance on chemicals rather than this integrated approach threatens long-term and chronic pollution exposure and contamination to habitats, animals, and humans.

BLM has failed to adequately catalogue the threats from the proposed action to the public health and well-being, and to sensitive and imperiled species. BLM sacrifices the eastside human and animal populations to chemical exposures that the Westside inhabitants are not subjected to. BLM fails to provide any valid analysis of the status of habitats and populations of sensitive and imperiled species and how this action will affect them.

BLM ignores its Conservation Plan for Sage Grouse and other requirements, and repeats in lockstep the very same actions that have led to ever-worsening weed infestations across the West: Multi-million dollar herbicide treatments that do not address root causes of weeds. BLM woefully fails to analyze the adverse impacts of the battery of vegetation treatments that it seeks to impose – thus expanding herbicide use greatly if this deficient EIS is allowed to stand.

There is no way that BLM can claim to have considered the impacts of its decision here on critical habitats for Sage Grouse, Bull Trout, and other special status species. It is clear that any threat to the already depleted populations of these imperiled species will be, by definition, irreparable in that additional threats may push these species closer to extinction.

The implementation of the Decision pending review by the Board on the merits of the Appeal will cause irreparable and irretrievable harm to the public lands and wildlife resources.

IV. Public Interest Favors the Granting of the Stay

The public interest clearly favors granting the Stay. The significance of the land and wildlife resources area that will be further degraded by the implementation of the Decision that clearly violates the public interest. The public interest supports recovering the health of these public domain lands - and of the public! Appellants Western Watersheds Project and Center for Biological Diversity believe the granting of a Stay in this matter clearly serves the interest of the health of ecosystems, and of native biota and humans on the public lands of Oregon.

Sincerely,

Sincerely,

Katie Fite
Biodiversity Director
Western Watersheds Project
PO Box 2863
Boise, ID 83701
208-429-1679
208-429-1679 (Fax – Please call first)

Jay Lininger, Ecologist
Center for Biological Diversity
P.O. Box 25686
Albuquerque, NM 87125
Tel: (928) 853-9929
www.biologicaldiversity.org

Certificate of Service

I certify that on October 29, 2010 I mailed by Certified Mail Return Receipt Requested, a Copy of this

Appeal to:

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy St.
Arlington, VA 22203

Oregon/Washington State BLM Director
PO Box 2965
Portland, OR 97208-2965

Regional Solicitor
Pacific Northwest Region
U.S. Department of Interior
805 SW Broadway #600
Portland, OR 97205-3346

Katie Fite Boise, ID