

November 1, 2010

USDI, Board of Appeals  
Office of Hearings and Appeals  
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## NOTICE OF APPEAL

This appeal is of the Record of Decision signed by Edward W. Shepard, Oregon/Washington Bureau of Land Management State Director, on October 1, 2010 for the *Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon*. The Record of Decision, the DEIS, the FEIS, and all documents tiered to, and supporting documents are hereby appealed pursuant to 43 CFR Part 4.

I, Jan Wroncy, appeal this decision on my own behalf, and on behalf of of Gaia Visions, Canaries Who Sing, Coast Range Guardians, Residents of Oregon Against Deadly Sprays and Smoke, and Citizens Environmental Protection Alliance.

Joined in this appeal are the following groups and individuals:

Cascadia Wildlands, Oregon Toxics Alliance; Maya Gee; Day Owen, on his own behalf, and on behalf of Pesticide Victims United, and The Pitchfork Rebellion.

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.

## REQUEST FOR A STAY

We, hereby, request a stay of the ROD, of the "slightly modified version of Alternative 4" and of any other use of herbicides proposed in this FEIS: Vegetation Treatments Using Herbicides on BLM Lands in Oregon.

This request of a stay, we believe, meets the following standards:

**1. The relative harm to appellants if the stay is denied far outweighs any potential harm from granting the stay.**

If this stay is denied the harm to members of the groups and individuals listed, as well as to the general public will escalate as the number of herbicides, the amount of herbicides, and the increase of area of the public lands are contaminated with toxic and persistent chemicals. Also the harm to ecosystems will increase, the harm to sensitive plants and animals will increase and the ecosystems will be pushed further out of balance. The massive use of herbicides will further disfavor native species of plants as they are disparately harmed by herbicides while the noxious weeds get stronger through natural selection as they survive after exposure to herbicides. These harms, if the stay is denied, far outweigh any potential harm from granting the stay.

**2. This appeal has a high likelihood of success on the merits.**

NEPA requires that any documents referred to, or tiered to much be available to the public for review (available without necessity of FOIA), yet the BLM chose not to publish the comments from over 1000 members of the public, but rather only publish the comments from government agencies. This is a violation of NEPA. Although the BLM gave "responses" to comments, BLM chose not to reveal the source. BLM refer to comments, but do not identify the source or provide the actual comments. This, we think, was meant to confound and confuse the public. Without actually knowing who sent the comment, and what the set of comments actually said, the public is not privy to the data (public input) that the decision-makers actually relied upon or (or ignored) in their decision making process. With the Draft EIS, and the Final EIS, all supporting documents, and references, the number of pages each member of the public was expected to read in order give meaningful input into the decision (ROD) was in the thousands of pages. The BLM EIS Team was allowed to work together (no doubt on small sections of the EIS) but the public was denied any way of working together because the members of the public were denied readily available information in the form of published comments. We sincerely worry that this was an intentional omission. This kind of omission, and denying of the public the information it needed was exactly what NEPA was meant to prevent. We believe that we will prevail on the merits on this point and the many other issues we are raising on appeal.

### **3. There is a high likelihood of immediate and irreparable harm if the stay is not granted.**

There is a high likelihood of immediate and irreparable harm if the stay is not granted because the herbicides proposed for use by are toxic, persistent, mobile, and some are extremely potent, causing biological damage even at levels that do not cause evidence of herbicidal damage. With this slightly modified Alternative 4, the majority of Oregonians will sustain non-consensual exposure to toxic herbicides in violation of the federally-enforceable labels, the federal pesticide laws (Federal Insecticide, Fungicide and Rodenticide Act), and in violation of 7 USCA Section 136j Unlawful acts [FIFRA section 12](a)(2)(G) and (P). Non-consensual exposure also violates the Constitutional Right of Bodily Integrity. Because it is well supported by evidence, and even by Oregon law (Pesticide Control Areas) that herbicides drift for long distances, even when applied by ground methods, and therefore control areas can be established for up to ten air miles around a protected area when herbicides are being used, clearly nearly everyone in Oregon will be drifted upon, and therefore, non-consensually dosed with toxic chemicals. This violates human rights, property and the environment. If BLM does in fact own about 25% of Oregon, and drift, vaporization, run-off in streams, contamination of ground and surfactant waters, entrainment in dust and other means of off-target movement will impose BLM's poor land management practices on every square inch of Oregon.

### **4. The public interest favors granting the stay.**

The public interest favors granting the stay. It is in the PUBLIC interest to have our environment, our property and our persons protected from unwanted and non-consensual exposure to toxic chemicals which are known to cause cancer, birth defects, and other degenerative diseases. It is in the PUBLIC interest to have clean drinking water, pristine water quality, clean breathable air, a balanced, harmonious and clean environment for our well-being.

It would have been in the PUBLIC interest to have the comments of everyone published, not just of agencies. It would have benefited the PUBLIC and the decision-makers to know that by far the majority of comments did in fact favor Alternative One - NO HERBICIDES.


### **Requested Relief**

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 tied to, or relied on granting herbicide use on BLM lands in Oregon. We furthermore request that the Record of Decision for the *Final Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon* be rescinded. An 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 as well as an analysis of the determination of what plants need to be controlled, and why.

## Statement of Reasons for Appeal

Additional reasons supporting the appeal will be sent within 30 days of this filing after the individuals and groups have had a chance to view the more than one thousand comments submitted to the BLM, but not published in the FEIS, or identified in the BLM response. Lisa Arkin of Oregon Toxics Alliance and I recently requested copies of all the comments pursuant to the Freedom of Information Act and just Friday October 29th received the first set. We hope to receive the second set on Monday, but will not be able to review them by the time this Notice of Appeal is due. Other appellants and other members of the public will benefit by having a chance to read these comments which we feel should have been published and referred to, by name, in the Response section prior to the issuance of the Record of Decision.

Sincerely,

  
Jan Wroncy, on my own behalf

and on behalf of of

Gaia Visions, Canaries Who Sing, Coast Range Guardians,  
Residents of Oregon Against Deadly Sprays and Smoke, and  
Citizens Environmental Protection Alliance.

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Francis Eatherington

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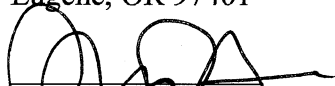
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Maya Gee

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Day Owen, Pesticide Victims United,  
and The Pitchfork Rebellion

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## Certificate of Service

I certify that I have mailed a copy of this appeal to the following parties via Certified Mail/Return Receipt on November 1, 2010.

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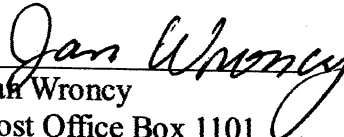
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