



May 2, 2019

Theresa M. Hanley
Acting State Director
Oregon/Washington
Bureau of Land Management
P.O. Box 2965
Portland, OR 97208

In Reply To: Western Oregon Tribal Fairness Act Reclassification Scoping
DOI-BLM-ORWA-0000-2019-0001-EA

Dear Ms. Hanley:

American Forest Resource Council (AFRC) is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to both O&C and Public Domain lands managed by the BLM, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. The state of Oregon's forest sector employs approximately 61,000 Oregonians, with AFRC's membership directly and indirectly constituting a large percentage of those jobs. Rural communities, such as the ones affected by this project, are particularly sensitive to the forest product sector in that more than 50% of all manufacturing jobs are in wood manufacturing.

AFRC holds a firm position that the O&C lands managed by the BLM are statutorily unique from other lands in the public domain (PD). Those lands designated as O&C are required by law to be managed for permanent forest production and the timber

on those lands is to be sold in conformance with the principles of sustained yield. 43 U.S.C. § 2601 (O&C Act). AFRC does not believe the current RMP complies with the O&C Act and our legal challenge to the RMP is pending. In the implementation of the Western Oregon Tribal Fairness Act (WOTFA), we have a vital interest in ensuring that the land base designated as O&C remain whole and that that land base include productive forest land capable of being managed under the principles of sustained yield for the health and viability of our membership.

Section 105(b)(1) of WOTFA requires the Secretary to identify PD Lands that are “approximately equal in acreage and condition as the O&C grant land identified under subsection [105](a).” **In our opinion, the term “condition” should include the following factors:**

- **Site potential of the ground**, which will dictate the ability of that ground to effectively grow timber resources capable of being managed based on the principles of sustained yield and capable of generating receipts to the county beneficiaries.
- **Existing growing stock on the ground**, which will determine the ability of BLM land managers to sell timber and generate receipts in the near-term.
- **Spatial positioning of lands**, which will dictate the communities that will likely benefit from the sale of timber products.

We would like the BLM to strongly consider each of these factors when developing proposals for reclassification. Those PD lands ultimately reclassified as O&C should be equal in site potential, growing stock, and location as those transferred to the Tribes. In the ensuing EA or Decision Memorandum we would like the BLM to provide the available data for these three condition factors for those transferred lands *and* those lands proposed for reclassification in order to adequately analyze the appropriateness of the proposal. The BLM should identify PD lands for reclassification with the highest level of equality across these three factors between those lands transferred to the Tribes and those proposed for reclassification.

BLM should also consider using a Categorical Exclusion (CX) to increase efficiency of this effort. The scoping letter states that “BLM is electing to prepare an EA under the National Environmental Policy Act to facilitate public involvement and assist in agency decision-making.” It is not clear to us why an EA is necessary here. BLM’s NEPA handbook provides for public involvement in actions that are subject to a CX. BLM NEPA Handbook, Rel. 1-1710, at 17, ch. 4. The Handbook directs that “[y]ou are encouraged to apply categorical exclusions, where appropriate, because they speed NEPA compliance.” *Id.* Guidance from the Center on Environmental Quality (CEQ)

affirms that a CX is “an efficient tool to complete the NEPA environmental review process.... The use of categorical exclusions can *reduce paperwork and delay*, so that EAs or EISs are targeted toward proposed actions that *truly* have the potential to cause *significant* environmental effects.”¹ This is particularly true where the management of all BLM land in western Oregon was reviewed in the 2016 EIS for the RMP revision. *See* NEPA Handbook at 22-23, § 5.1.1.

It is likely that the reclassification effort is eligible for several applicable CXs, particularly given BLM’s position that the reclassification “will not change the BLM’s current management of the land.” Scoping Letter at 1. The following Departmental and BLM CXs may apply:

Departmental CXs (NEPA Handbook, App. 3)

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions including such things as salaries and expenses, procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.8 Management, formulation, allocation, transfer, and reprogramming of the Department’s budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

1.10 Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

¹ Nancy H. Sutley, Chair, CEQ, “Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act,” Nov. 23, 2010, at 2-3 (emphasis added), *available at* https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.

BLM CXs (NEPA Handbook, App. 4)

E.2. Withdrawal revocations, terminations, extensions, or modifications; and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.

E.3. Withdrawal revocations, terminations, extensions, or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions (prior to implementation) are in conformance with and are covered by a Resource Management Plan/EIS (or plan amendment and EA or EIS).

Please give careful consideration to use of a CX and Decision Memorandum or Determination of NEPA Adequacy, which will conserve agency resources that are better spent reviewing actions that may actually have any environmental impact. There is nothing to suggest that any extraordinary circumstance would preclude using a CX (NEPA Handbook, App. 5).

AFRC is happy to be involved in the planning, environmental review, and decision-making process for Western Oregon Tribal Fairness Act Reclassification. Should you have any questions regarding the above comments, please contact me at 541-525-6113 or ageissler@amforest.org.

Sincerely,

Andy Geissler
Federal Timber Program Director
American Forest Resource Council