



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office
P.O. Box 2965
Portland, Oregon 97208

IN REPLY REFER TO:
5040 (OR-931)

DEC 29 2008

CERTIFIED MAIL – 7000 1670 0007 7293 4359
RETURN RECEIPT REQUEST

Mr. Andy Kerr
The Larch Company
1213 Iowa Street
Ashland, OR 97520

Dear Mr. Kerr:

The Bureau of Land Management (BLM), Oregon State Office, received your letter dated July 24, 2007, in which The Larch Company and the Klamath Siskiyou Wildlands Center protested BLM's May 23, 2007, administrative decision to establish sustained yield units (SYU) on BLM land in western Oregon. Notification of this forest management decision was published pursuant to 43 CFR 5003.2(c) on July 18, 2007. You filed a single timely protest to that decision, which was received on July 26, 2007.

In anticipation of completing the Western Oregon Plan Revisions, the BLM, in the SYU decision, abolished the existing twelve master units and, in their stead, designated six SYUs aligned with the district boundaries based on the following rationale:

- The Oregon & California Revested Railroad Grant Lands Act of 1937 (O&C Act) calls for the establishment of SYUs to facilitate sustained yield management and does not mention master units. The BLM never established SYUs; instead we used the now obsolete master units to serve as the SYUs. The proposal to establish SYUs is consistent with the intent of the O&C Act.
- The original master units were designated in 1946 and 1947 to indicate areas from which a certain amount of timber would be offered each year. The configurations of the master units are no longer logical, given today's timber market and resource management capability. For example, rural sawmills have been mostly replaced by larger, centrally-located mills; equipment and infrastructure have improved to allow the transportation of logs over great distances; market demands have changed; and, remote sensing, mapping, computers and inventories are vastly improved, allowing the resource manager to effectively manage larger areas. Because of these changes, the BLM has not allocated Allowable Sale Quantity (ASQ) performance targets to the Districts by master unit.
- Timber management, including offering of the ASQ, is one of the many responsibilities of the District Manager, who is funded to carry out a full program of work on the lands within the district. The master units do not define the boundary of the area of their responsibility nor the area from which today's ASQ targets must be met, and no longer serve a useful purpose in

facilitating sustained yield management. Matching the SYU boundary to the District boundary enables the District Manager to plan and implement the timber management program along with a variety of other resource management programs in a single, easily-defined portion of the landscape, facilitate integrated priority setting and project planning, and coordinate on-the-ground activities.

- We have determined that the establishment of six SYUs, with ASQ targets defined for the larger SYUs rather than the current 12 master units, will provide the District Managers with greater flexibility than the current master units to work with the public, stakeholders, and others to plan where and when timber sales will be offered.

The preamble to the Statement of Reasons in your protest includes opinions that are not relevant to the decision to designate SYUs. You raise issues which cannot be protested at this time, and as such, they will not be addressed in this protest response.

RESPONSE TO STATEMENT OF REASONS:

I considered your protest carefully, and I consolidated your protest points into issues to facilitate my understanding of your protest and to focus my response. I provide the following assertions and supporting rationale to implicitly address the points you raise in your protest, as consolidated:

1. The BLM has the authority to include the O&C, Coos Bay Wagon Road (CBWR), and Public Domain (PD) lands within a SYU in an annual productive capacity/ASQ computation.

Your protest uses the term “working circle,” which is not used by the BLM nor defined in applicable statute or regulation. For the purpose of this protest response, this term is assumed to be synonymous with SYU – the boundary which defines the lands considered in computing the annual productive capacity under a RMP. The term “annual productive capacity” comes from the O&C Act. The BLM considers this term to be synonymous with ASQ.

You provide no evidence to support your assertion (paraphrased) that combining O&C, Public Domain (PD), and Coos Bay Wagon Road (CBWR) lands into an ASQ calculation has the effect of increasing the timber harvested on O&C and/or CBWR lands beyond their own individual sustainable levels. A sustained yield calculation based on the combined lands would account for age class distribution and all other factors affecting growth and yield and would provide an ASQ level that can be sustained in perpetuity on those lands, with no decline in timber quantity and no impairment of the productivity of the land. Any environmental effects of a possibly greater ASQ due to the designation of the six SYUs have been analyzed in the Final Environmental Impact Statement (FEIS) for the Western Oregon Plan Revision.

Regarding the CBWR lands, you are correct that the simple language in the O&C Act authorizing the designation of SYUs does not mention inclusion of “reconveyed” CBWR lands. The BLM believes that Congress intended to include CBWR lands with revested O&C lands within an SYU. This contention is supported by the language of the O&C Act in the first two

paragraphs, which direct that both O&C and CBWR lands be included in the sustained-yield determination and declaration of the annual productive capacity for the purpose of contributing to the economic stability of local communities and industries.

Regarding PD lands, they are managed under the Federal Land Policy and Management Act (FLPMA), which directs the BLM to conduct land use planning and identify uses for those lands. For the sake of efficiency of management and to avoid unnecessary confusion, the PD lands allocated for timber harvest should be included in the same units for sustained yield management as the nearby O&C lands. The FLPMA defines sustained yield as “the achievement and maintenance in perpetuity of a high-level, annual or regular, periodic output of the various renewable resources of the public lands consistent with multiple uses.”

Ever since the BLM created these twelve master units in 1946 and 1947, the BLM has calculated the ASQ on the combined O&C, CBWR, and PD lands within the master units. With the designation of SYUs, the BLM is not proposing to change that approach at this time. Both the O&C Act and FLPMA direct that lands be managed under the principle of sustained yield. Determination of an ASQ for all the lands designated for timber production is consistent with the direction of both Acts.

2. Inclusion of the PD lands in the ASQ computation within an SYU does not dedicate those PD lands to maximum timber extraction, nor does it exceed the authorities of the FLPMA or the O&C Act by including PD lands in an ASQ computation for an SYU.

The October 2008 FEIS for the Western Oregon Plan Revisions states:

“Of the 2,557,800 acres of BLM-administered lands in the planning area, approximately 394,600 acres are public domain lands. About half of those public domain lands are small parcels that are widely scattered and intermingled with the O&C lands. While the FLPMA requires that public domain lands be managed for a multitude of values, the FLPMA does not require that every parcel be managed for every value. As in previous resource management plans, these public domain parcels will be managed in accordance with the 1975 Public Land Order (PLO) No. 5490, which reserves these intermingled public domain lands for multiple-use management, including the sustained yield of forest resources in connection with the intermingled revested Oregon and California Railroad Grand lands and reconveyed Coos Bay Wagon Road Grant lands.”

Of the approximate 394,600 acres of PD lands addressed by the FEIS, approximately 222,800 acres are included in the six SYUs (the remainder are located in the eastern portion of the Klamath Falls Resource Area, which is not within the designated SYU). Of these 222,800 acres, approximately 70,400 acres (32 percent) are located in the Timber Management Area and Deferred Timber Management Area and dedicated to timber production. The other 68 percent of PD lands are dedicated to non-timber resources, therefore, the PD lands are not dedicated to maximum timber extraction. It is the land use allocation decision in the RMP that determines the extent of timber use that will be made of these lands, not whether or not they are included in the

same SYU as the O&C lands for purposes of calculating the sustained yield capacity of the lands allocated for timber production.

3. The BLM is not contemplating cooperative agreements with other Federal or State forest administrative agencies or with private forest owners or operators for the coordinated administration and sustained yield of forest units that would constitute a major federal action affecting the human environment.

This issue is irrelevant to the decision to designate SYUs on BLM land in western Oregon at this time. While the designation does not preclude such cooperative agreements, none of the other entities mentioned in the O&C Act have been interested in coordinating their administration with the O&C lands.

4. The requirements of the National Environmental Policy Act (NEPA) do not apply to the administrative decision to designate SYUs on BLM land in western Oregon.

The NEPA does not apply where the proposed Federal action does not alter the natural physical environment. The designation of SYUs is adoption of policy that is administrative in nature, which may influence only how we would determine an ASQ. This adoption of policy does not authorize any activity nor commit any resources; and, therefore, does not affect the human environment; and, therefore, does not trigger NEPA, because NEPA does not apply where the proposed Federal action does not alter the natural physical environment.

Furthermore, it would be inappropriate to describe any environmental effects attributable to identification of SYUs. Potential environmental effects would come from on-the-ground action, e.g., a timber harvest, which is authorized by BLM project-level decisions in compliance with RMP decisions, and for which NEPA documents are prepared. The BLM also prepares NEPA documents for an RMP decision that allocates land uses and provides directions for managing the uses on the lands, including timber harvest and the determination of the annual productive capacity of the lands. The FEIS documents the environmental effects of the Proposed RMP and alternatives in compliance with NEPA and other applicable laws. In contrast, the identification of SYUs does not authorize or direct any timber harvest. It merely states that we will determine the ASQ at a specific geographic scale.

The contention that NEPA procedures do not apply is supported by the court in *Douglas County v. Babbitt*, 48 F.3d 1495, 1505 (9th Cir. 1995), in which it is stated “[w]e find that the NEPA procedures do not apply to federal actions that do nothing to alter the natural physical environment.”

5. In the designation of SYUs, the BLM has appropriately considered the requirement of the O&C Act to “provide, insofar as is practicable, a permanent source of raw materials for the support of dependent communities and local industries.”

As stated in your protest, the BLM has not defined “local industries,” nor does it do so through the establishment of SYUs. The authority in the O&C Act for the establishment of SYUs is to “provide, insofar as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region.” The law does not say for the exclusive support of local industries, nor does it define local industries of the region. Congress wrote the O&C Act to convey benefits to the region encompassed by the O&C Counties, in lieu of property taxes from the Federal revested lands within their boundaries. Congress implied that the definition “local” meant communities and businesses within the O&C Counties, rather than beyond the O&C Counties. The same definition of “local” pertains today. Over time, the patterns of timber processing and employment have changed within the O&C Counties. For example, larger mills closer to transportation arteries have replaced small remote mills. However, local facilities within the O&C Counties still process the majority of O&C timber harvested.

The establishment of SYUs will not change the pattern of timber industry employment within the O&C Counties, nor will establishment of SYUs stimulate a shift of timber industry employment from within the O&C Counties to beyond the O&C Counties. The current, declared annual productive capacities, although calculated for the 12 previous master units, were nevertheless declared as single-district figures in the Records of Decision for the existing District RMPs, even though they were combinations of determinations of annual productive capacities of two or more master units. There is no evidence that this District-level declaration of the annual productive capacity had any influence on the location of timber employment that would be any different than declaring the annual productive capacity by using the master units. Upon the issuance of the Records of Decision for the Western Oregon Plan Revisions, the BLM will, again, declare single-district annual productive capacities. The change to six computations of annual productive capacity from the previous twelve computations is “transparent” to local industries and has no effect on their infrastructures.

The designation of SYUs is for the purpose of calculating an ASQ. The BLM could designate the entire planning area for the Western Oregon Plan Revision as a single SYU, however, using districts as boundaries ensures a more evenly distributed offering of the sustained flow of timber from the BLM lands in western Oregon. While this provides some competitive advantages to local industries, the BLM does not control who bids on sales, nor the destination of logs that come from the BLM sales. Therefore, a more evenly distributed offering of sales is not a guarantee that local industries will secure this timber to supply their needs.

The designation of the new district-boundary SYUs does not change or affect local industries that have relied on a sustained yield of timber from one or more of the 12 existing master units. The BLM did not receive comments indicating concerns from the timber industry, or the O&C Counties, indicating the proposed SYUs would be inconsistent with the intent of the O&C Act to contribute to the local economy and industries.

6. The administrative designation of SYUs does not change the BLM's statutory requirements.

The designation of SYUs is an administrative action. The O&C Act authorizes the BLM to take such administrative action and designate SYUs. The May, 23, 2007, decision to designate SYUs does not change the BLM's statutory requirements, including those to protect aquatic resources. The BLM will analyze on-the-ground actions proposed within the area of the designated SYUs, both programmatically and at the individual project-level, according to NEPA requirements. In compliance with all statutory requirements, environmental effects or impacts for resources were programmatically addressed in the October, 2008, FEIS and will be addressed in future environmental assessments for specific on-the-ground projects.

DECISION

The above response to your Statement of Reasons supports the rationale for my decision on May 23, 2007, to designate six SYUs that coincide with the boundaries of the Salem, Eugene, Roseburg, Medford, and Coos Bay Districts, and the area west of Highway 97 in the Klamath Falls Resource Area of the Lakeview District. I have reviewed this designation of SYUs and find the designation to be in compliance with all applicable law.

Your protest has been reviewed in accordance with the regulations in 43 CFR § 5003.3. It is my determination that there is no merit to your protest, and I therefore deny your protest of the May 23, 2007, decision to designate SYUs in western Oregon. Given how this decision relates to the Western Oregon Plan Revision process and the need to make a declaration of an annual productive capacity in the very near future, I will not delay the effect of this designation for a ruling by the Interior Board of Land Appeals on a stay request. Instead, in accordance with regulations set forth in 43 CFR § 5003.3 (f), I will give full force and effect to the designation of SYUs following this decision to deny your protest.

If you wish to appeal my decision to deny your protest and to proceed, the following paragraphs provide instructions for doing so.

You have the right to appeal this decision to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. In taking an appeal, there must be strict compliance with the regulations.

If you choose to appeal, a notice of appeal must be filed in this office within thirty (30) days of receipt of this letter for transmittal to the Board. If your notice of appeal does not include a statement of reasons, one must be filed with the Board within thirty (30) days after the notice of appeal was filed.

A copy of your notice of appeal and any statement of reasons, written arguments, or briefs, must also be served upon the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 S.W. Broadway, Suite 600, Portland, Oregon 97205. In any appeal, you should

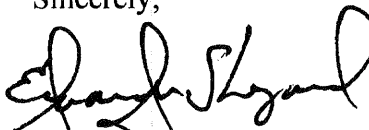
consider the Association of O&C Counties as an adverse party to whom you must also serve these documents. Their address is as follows: Association of O&C Counties, P.O. Box 2327, Harbor, Oregon 97415. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations.

As provided by 43 CFR Part 4, you have the right to petition the Office of Hearings and Appeals to stay implementation of the decision; however, you must show standing and present reasons for requesting a stay of the decision that address your interests and the manner by which they would be harmed.

A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied; (2) the likelihood of the appellant's success on the merits; (3) the likelihood of immediate and irreparable harm if the stay is not granted; and (4) whether the public interest favors granting the stay.

Should you choose to file one, your stay request must accompany your notice of appeal. A notice of appeal with petition for stay must be served upon the Board, Regional Solicitor, and the adverse party. At the same time, such documents are served on the deciding official at this office. The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3.

Sincerely,



Edward W. Shepard
State Director,
Oregon/Washington

Enclosure

cc:

Association of O&C Counties, P.O. Box 2327, Harbor, Oregon 97415

OR-931(Lyndon Werner)

Mr. Joseph Vaile, Klamath Siskiyou Wildlands Center, PO Box 102, Ashland, OR 97520

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL.....

WITH COPY TO SOLICITOR...

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR.....

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.