

Endangered Species Act Effects

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Coalition

Rabbits Foot Mussel



Neoshot Musket Mussel



Tiger Salamander



Tiger Salamander Fence

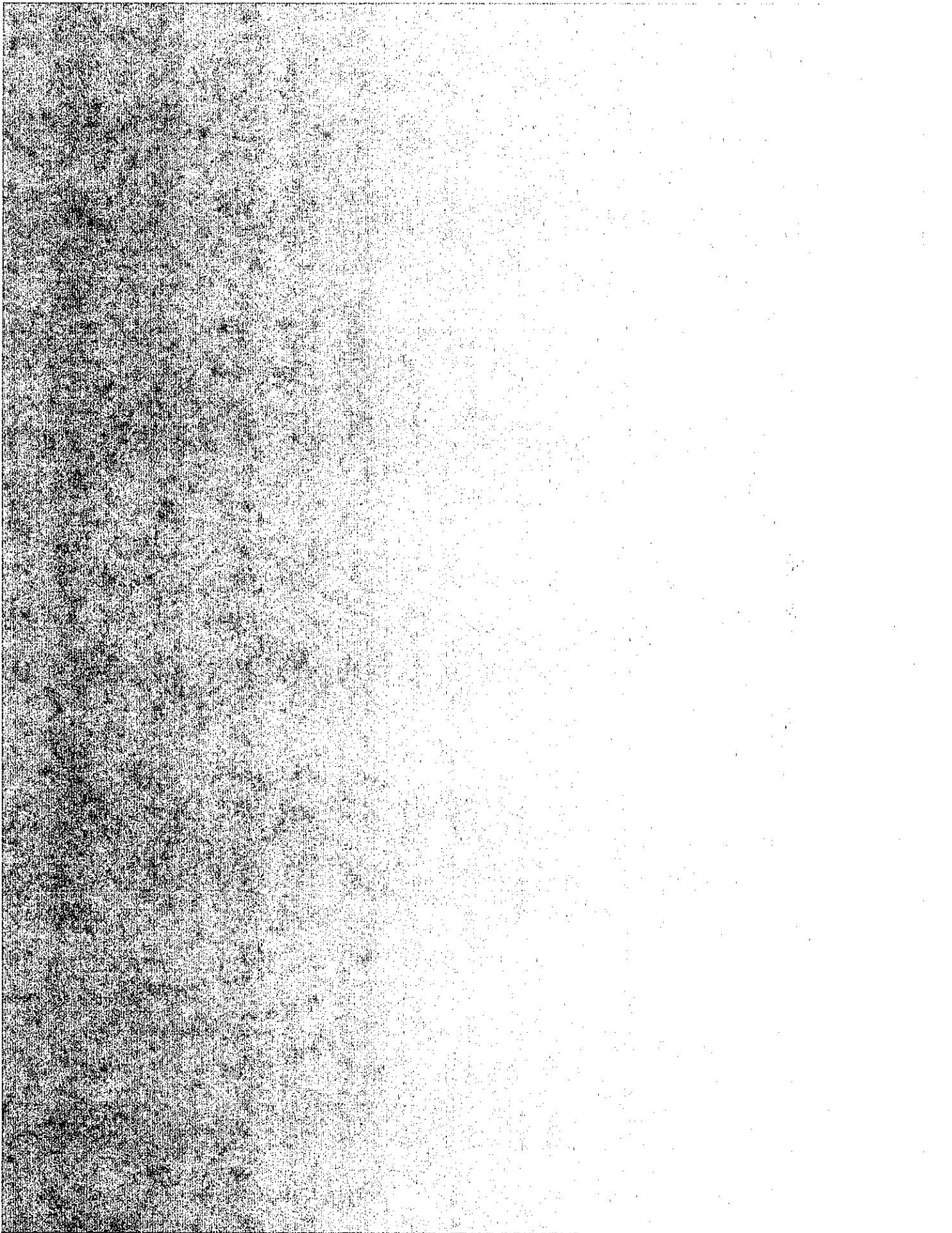


Tiger Salamander Fence (cont.:)

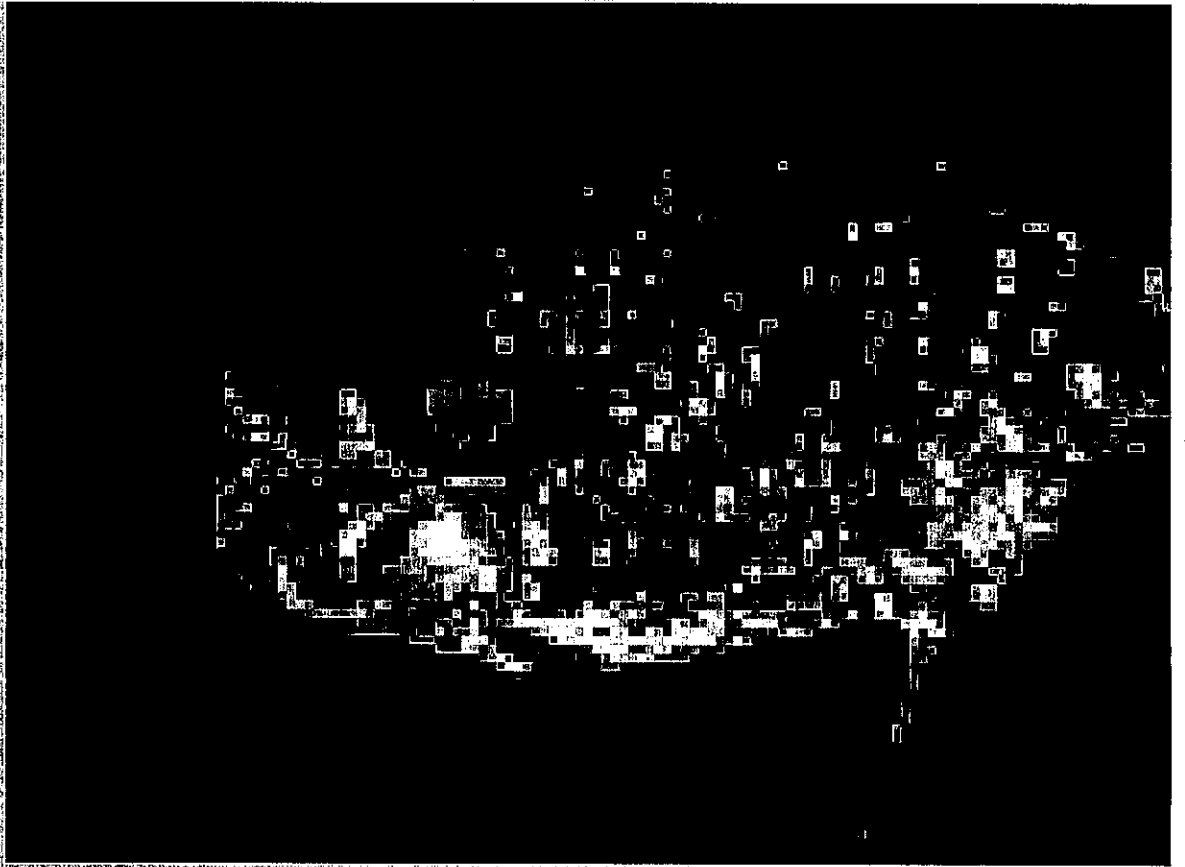


Tiger Salamander Annualized Construction Costs

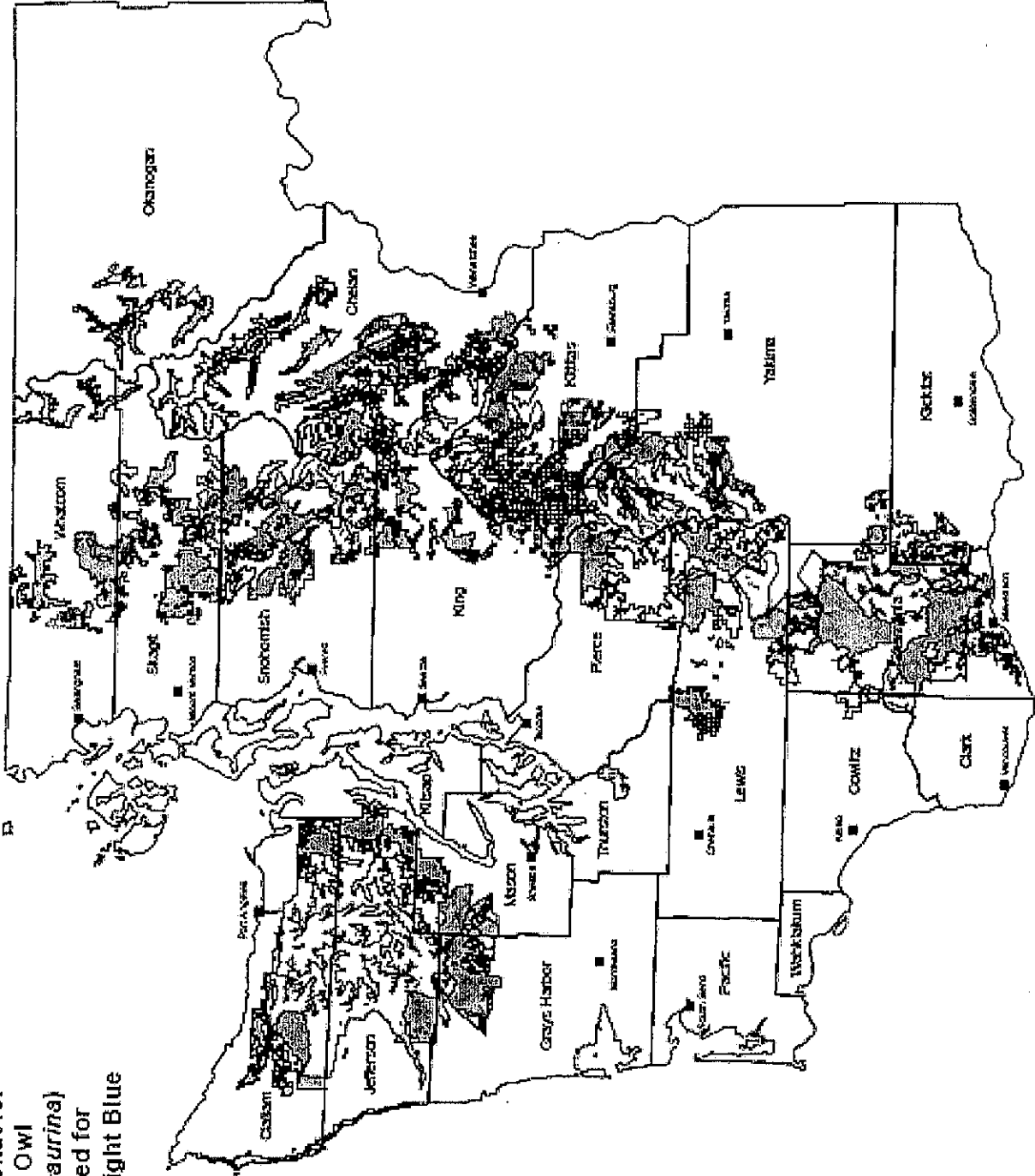
- *“Annualized impacts to the construction industry (\$6,630.00 applying a 7 percent discount rate) are estimated to be significantly less than annual revenues that could be generated by a single small construction company”* “We conclude that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore we are certifying that the designation of critical habitat for the Sonoma County Tiger Salamander will not have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is not required.”



Northern Spotted Owl



**Proposed Critical Habitat for
Northern Spotted Owl
(*Strix occidentalis caurina*)
with Lands Proposed for
Exclusion Shown in Light Blue
Washington**



Legend

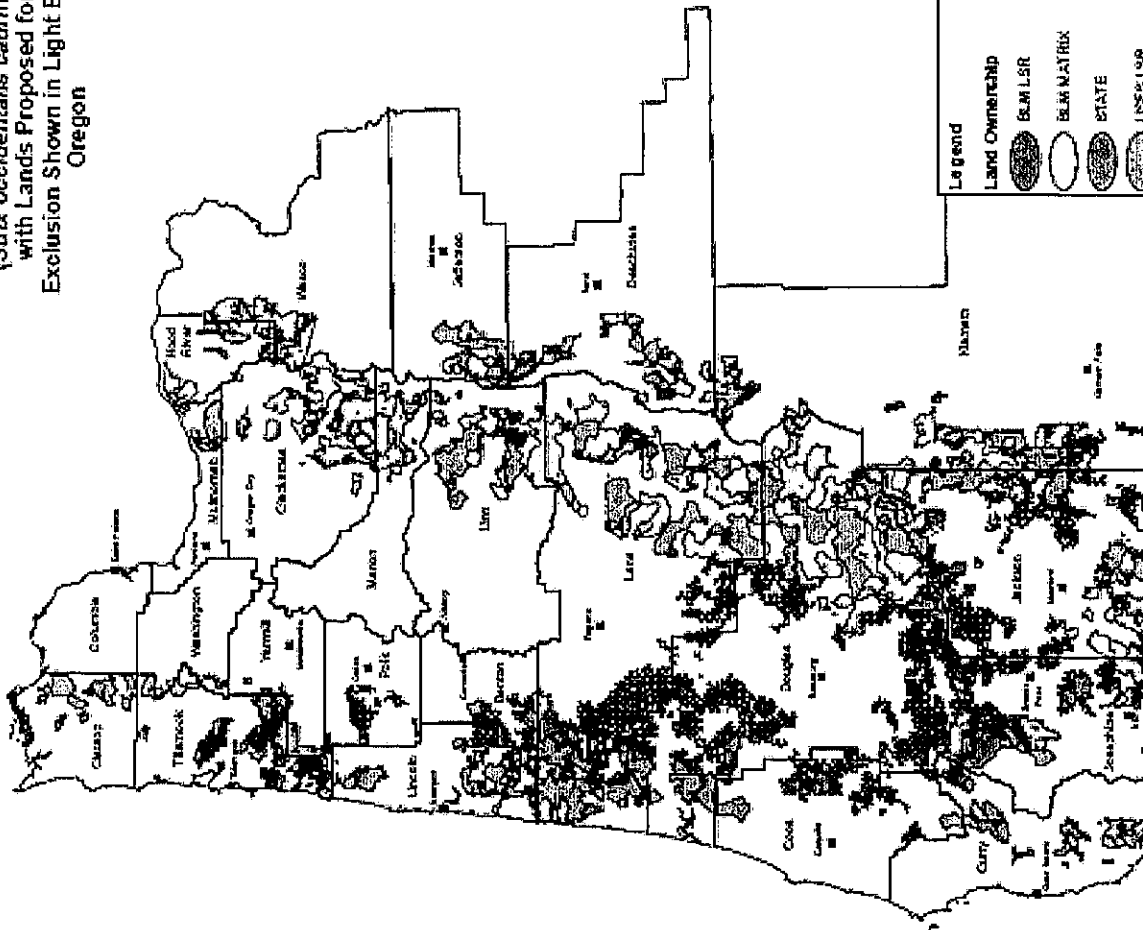
Land Ownership

- PRIVATE
- ▨ STATE
- ▩ USFS LSR
- USFS MATRIX
- Proposed for exclusion

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**Proposed Critical Habitat for
Northern Spotted Owl
(*Strix occidentalis caurina*)
with Lands Proposed for
Exclusion Shown in Light Blue
Oregon**



April 23, 2012
Oregon Fish and Wildlife Dept.

This information is made by the U.S. Fish and Wildlife Service in the exercise of its authority under the Endangered Species Act of 1973. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose.



History of NSO

- 1990 listed as Endangered
- 1992 First Critical Habitat (6 million Acres)
- 1994 Clinton NW Forest Plan
- 2006 Critical Habitat Created
- 2008 Court Remanded
- 2012 New Critical Habitat (13.9 million Acres)
including private and state property.

1992 USFW Assumed Economic

Impacts

- USFW estimates that *only* 27,000 jobs would be lost

✓ Indicating that this equaled only 3% of the forest products jobs *nationally* as if the NSO was listed across the country.

- USFW estimates \$50 million per year in lost revenue to the national treasury.
- USFW doesn't estimate loss of private mills.
- USFW doesn't recognize the rural nature of the affected communities or their economies

Actual Economic Impacts


1990 - 2010

- Within the 51 counties impacted by NSO Critical Habitat
 - ✓ 320 Mills Closed (all privately owned)
 - ✓ 33,000 Mill Workers lost their jobs
 - ✓ 1,000 additional Mill Workers lost jobs 2010-2012
 - ✓ 17,000 Additional Forest/Wood products jobs lost
 - ✓ Families below poverty line +/-18%
 - ✓ Average of 10.5% of kids on Free and Reduced Lunch (a nationally recognized indicator of poverty)
 - ✓ Loss of +/- 1.0 billion in revenue to Federal Treasury

Estimated Economic Impacts

NSO 2012 Critical Habitat

- As discussed in more detail below, we found that, depending on the decisions made and future directions taken by Federal action agencies, the incremental impacts of the proposed critical habitat revision will likely be **minimal, or may even have a positive impact, if ecological forestry prescriptions are applied**. This analysis will be refined and revised, based on information we receive during our comment period, and a final economic analysis will be made available at the time of publication of the final rule.



Dear Commissioner Pearce:

Thank you for your letter of May 17, 2012. Your letter requests Cooperating Agency status on behalf of Skamania County for the Fish and Wildlife Service's (Service) preparation of an Environmental Assessment (EA) to consider the designation of critical habitat for the northern spotted owl.

The regulations implementing the National Environmental Policy Act (NEPA) define a "Cooperating Agency" as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment" (40 C.F.R. § 1508.5). A State or local agency of similar qualifications may by agreement with the lead agency become a cooperating agency. Council on Environmental Quality (CEQ) regulations do not discuss cooperating agencies in the context of EAs because they are generally concise documents prepared to determine whether the proposed action will significantly affect the quality of the human environment and so whether an environmental impact statement is needed. Thus, EAs normally do not warrant use of formally-designated cooperating agencies. Because we are currently preparing an EA for this proposed critical habitat designation, we are not formally appointing any agency as a cooperating agency at this time. However, we welcome your comments on the draft EA, which was released for

2012 Proposed NSO Critical Habitat Ownership

	LAND AREA	PERCENT TOTAL AREA (ACRES)
US Forest Service	9,524,623	68.2%
Bureau of Land Management	1,483,607	10.6%
National Park Service	998,580	7.2%
Other Federal (DOD)	14,313	0.1%
State	670,671	4.8%
Private	1,269,890	9.1%
TOTAL	13,961,684	100%

Notes:

1. Acreage numbers throughout this report may differ slightly from those provided in the Proposed Rule due to minor boundary adjustments included within the GIS data used to inform the Economic Analysis.

WA Forest Practice Rules Based on USFW/DNR HCP

- 9-1-2006 Removes the ability of a landowner to count an adjacent landowner's habitat under an HCP, LOP or other approved plan.
- In the definition of "Northern spotted owl site center", places a moratorium on the practice of "decertifying" Status 1, 2, and 3 spotted owl sites. This moratorium is in place until June 30, 2007 until a spotted owl recovery plan is completed.

SDS Lumber Story

- Own 80,000 acres of timber along the White Salmon river
- Saw preliminary USFW NSO critical habitat map including much of their land.
- Approached USFW to discuss
- USFW suggested “Safe Harbor Agreement”
- Spent in excess of \$750,000 on attorneys/consultants as they were required to do Environmental Assessment
- Spent an additional \$200,000 in company employee time.
- USFW refused to complete final Critical Habitat in Washington until “Safe Harbor Signed”

Comments on Barred Owl DEIS

- The DEIS identifies the root cause of the spotted owl's decline. After twenty-years of working on this issue, we finally understand that: **“an increase in, or continued persistence of, barred owl could lead to local or large-scale extirpation of spotted owls including possible extinction of the species.”** Yet, despite this recognition, barred owl removal is being considered in isolation from the overall recovery strategy. Perhaps most significantly, critical habitat mapping decisions are proceeding on an entirely separate track.

DEIS, p. 138, emphasis added.

Comments on Barred Owl DEIS (Cont.)

- *“Barred owls are slightly larger and more aggressive than spotted owls, and compete for the same habitat.”* ... If no barred owl removal occurs (No Action Alternative) within the proposed study areas, northern spotted owl populations would likely continue to show declines in the survival, reproduction, and population growth rates.

- DEIS, pgs. 2 and 138. emphasis added

Riparian management zone (RMZ)

Site Class	Total RMZ Width Either side of Stream
I	200'
II	170'
III	140'
IV	110'
V	90'

Forest Practices Definitions

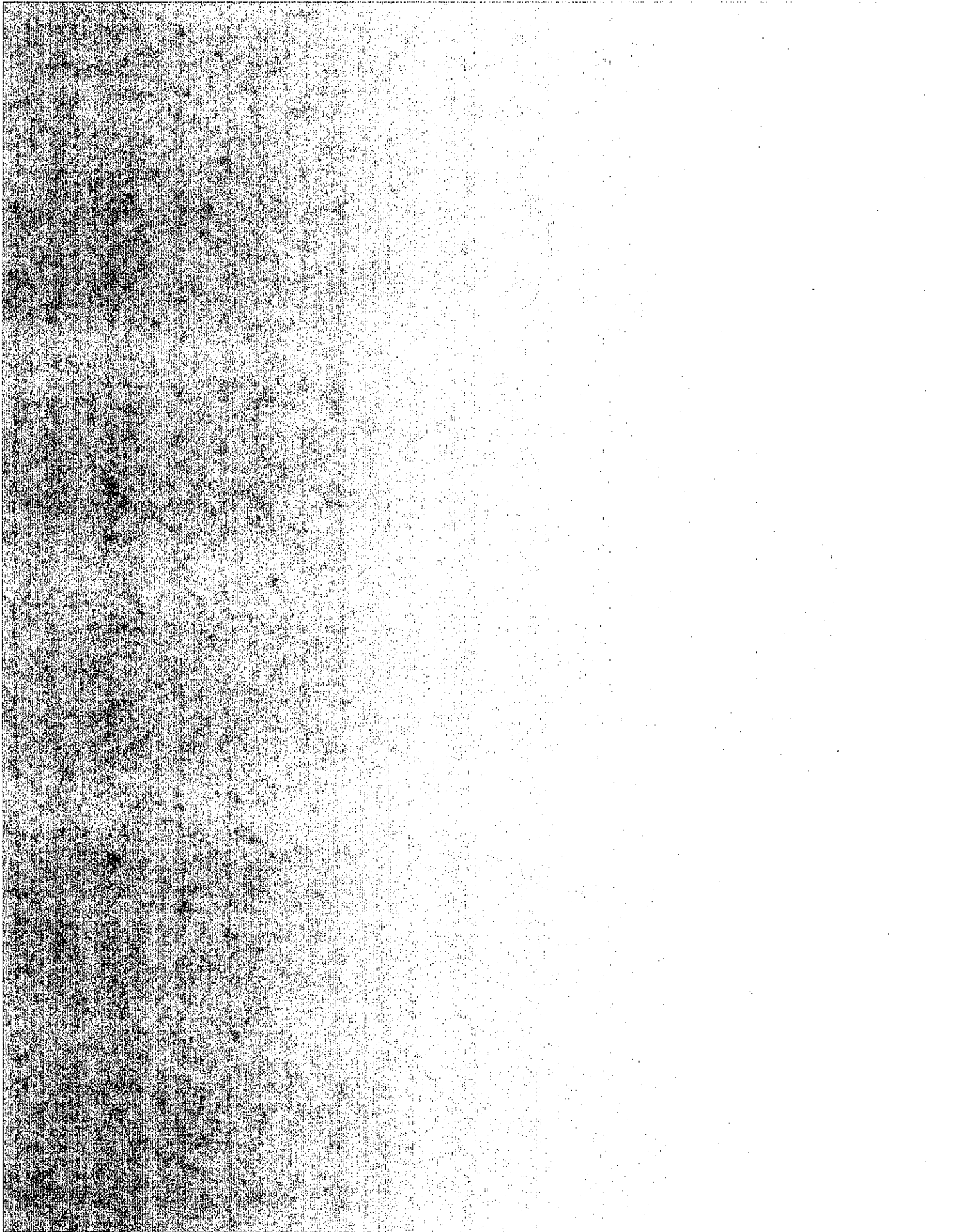
Based on HCP

- **"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

- "Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:
 - Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.
 - Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.
 - Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.
 - Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

Wetland Typing System.

- The department in cooperation with the departments of fish and wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified in order to distinguish those which require wetland management zones and those which do not.



Cattle and Water



Oregon Cattle US Federal District Court Case

- Currently pending before a U.S. District Court Judge in Portland is a case involving 15 families and their 4,000 head of cattle that graze on 280,000 acres of National Forest in Oregon. The summer grazing allotments have been challenged by a claim that the cattle are causing stream bank alterations which are causing pollution that is degrading the Primary Constituent Elements in areas designated as Critical Habitat for listed Salmonid's. To date the families have collectively spent about \$700,000.00 in legal fees and biological studies. The case is still pending while the U.S. Forest Service completes a Biological Opinion for the National Marine Fisheries Service. I raise this example because it involved a federal agency to federal agency consultation and according to the economic analysis Mr. Metzger will discuss with you that private parties are presumed to have no cost. The reality is that in virtually every legal case or consultation, private and/or public parties will intervene in litigation or the preparation of Biological Opinions. It is their future which is at stake.

Kay Teisl - Executive Director Oregon Cattlemen's Association

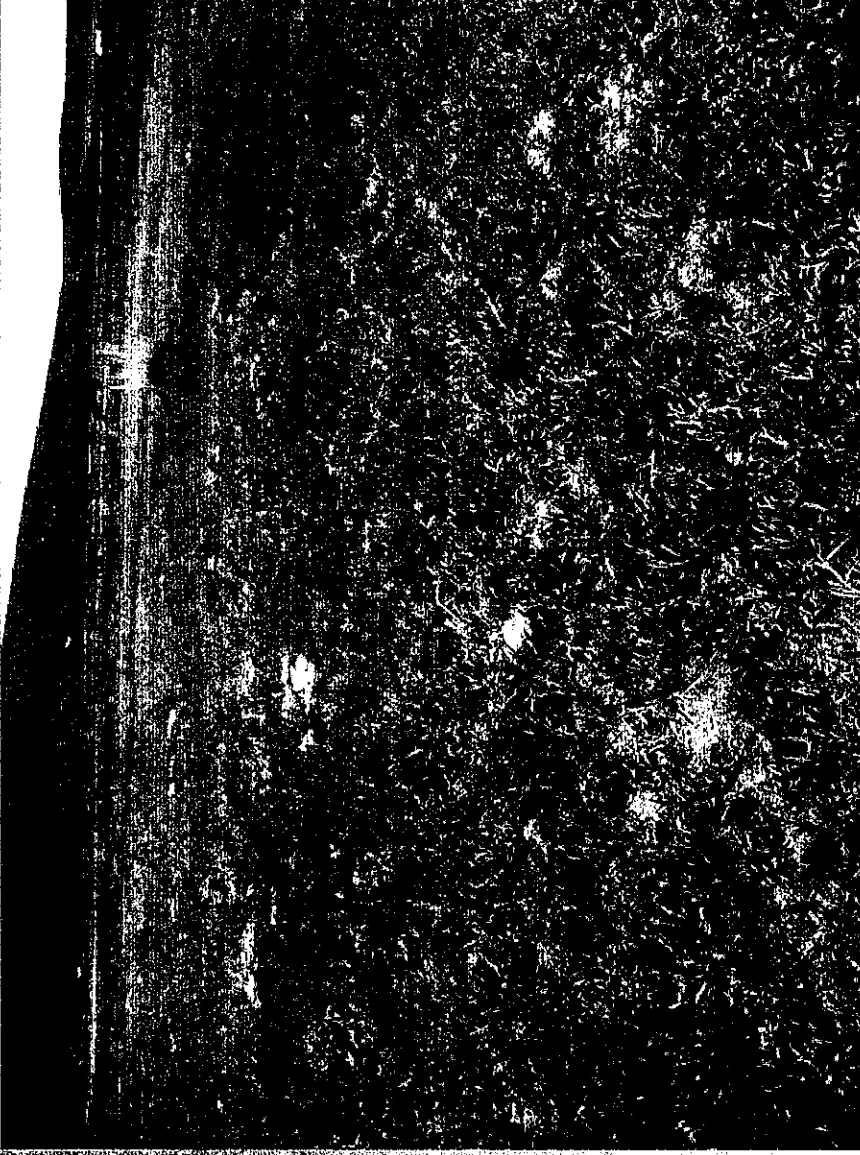
... the agency often has a different idea of what is acceptable to "prevent" water pollution (including having "effective" shade) and the compliance protocols are vague. What a site looks like really depends on the time of year so having data during different times of the year is very informative to the actual impacts in the water. That is why data collection (riparian vegetation and water quality samples) and having a history of management practices on private lands recorded is so important to defend against a complaint and avoid having to fence or change grazing practices.



The upper segment of the Powder River is fully vegetated with grass species and riparian vegetation appropriate for the Baldock soils.



This is a photo of Baldock soil with a wet meadow plant community type in the foreground and Haines soil with a salt grass plant community in the mid to far ground (light green).



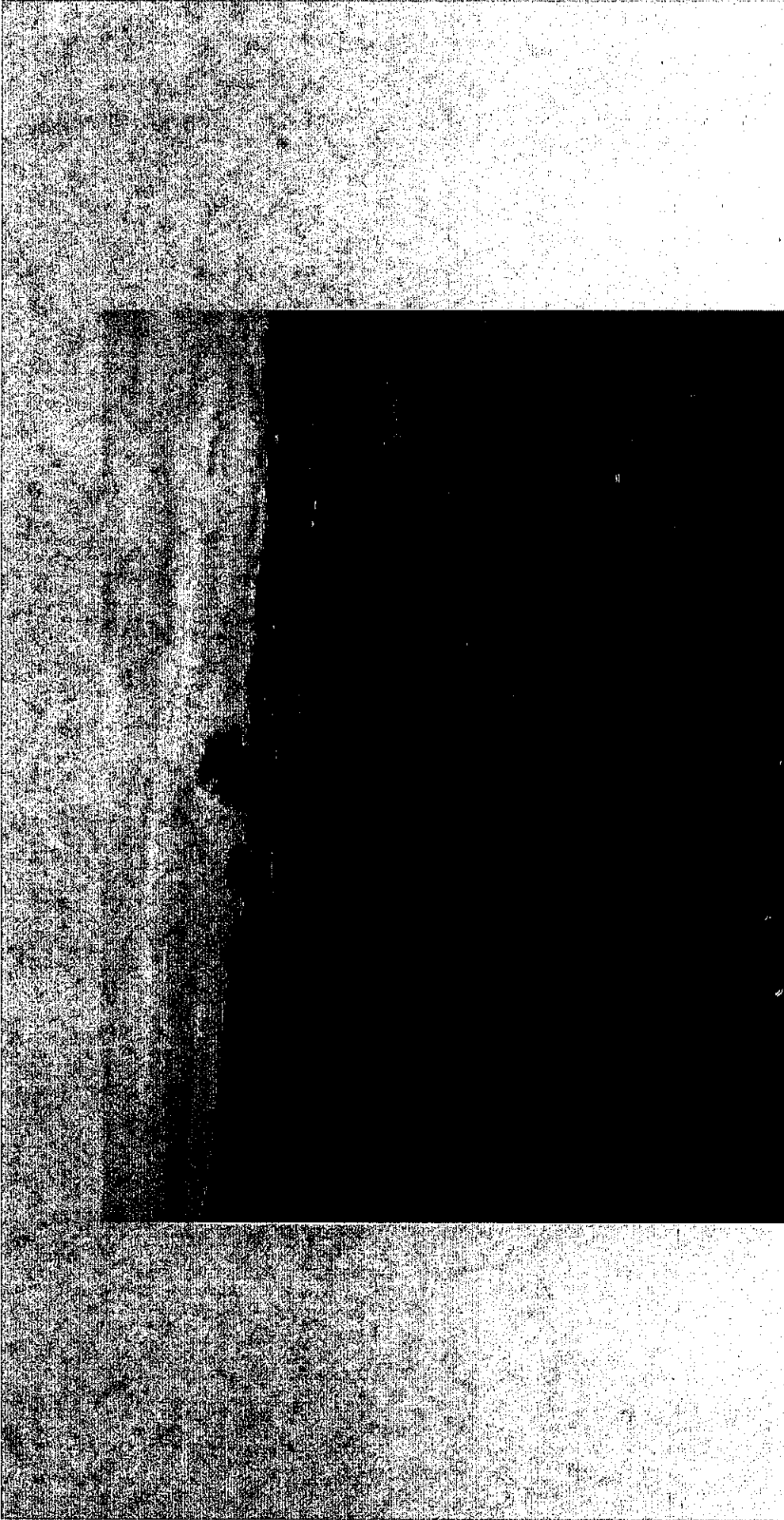
This photo was taken in early May of the salt grass area at the lower end of the property along the Powder River.



There are several small areas with greasewood shrubs, which are native and occur naturally on these sites.



The ground cover is comprised of a diverse plant community on the river banks.



The banks are vegetated and meet the expected ground cover for the soil types during all seasons.

WA Supreme Court Justice Debra

Stephens Majority Opinion

Lemire VS Dept of Ecology

- ... in favor of DOE that direct evidence of pollution by Lemire was unnecessary. *“The statute under which DOE operates does not require it to prove causation,”* ... According to testimony ... access to the stream by cattle was a recognized cause of pollution, namely the introduction of manure into the stream. *“Such organic matter tends to cause pollution,”* ... *“Hence, DOE met its statutory burden. It was not required to show that the conditions on Lemire’s property were a proximate cause of the polluted creek.”* ... dismissed Lemire’s takings claim, ruling that he had failed to prove that the required fencing would prevent his cattle from utilizing his entire property.

WA Supreme Court Justice James

Johnson Dissenting Opinion

Lemire VS Dept of Ecology

... called the decision "extremely burdensome". "The order may also force a rancher, whose retirement is tied up in his small farming and ranching operation, to spend tens of thousands of dollars to erect the very fence that will keep him from using a significant portion of his property," wrote Johnson