

## Appendix E – Compliance with Standards and Guidelines for Survey and Manage Species

The Trinity River Watershed Restoration Project (Project) is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the 1995 Shasta-Trinity National Forests' (STNF's) Land and Resources Management Plan (LRMP).

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in Conservation Northwest, et al. versus Rey, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs' motion for partial summary judgment and finding a variety of violations of the National Environmental Policy Act (NEPA) in the U.S. Forest Service (USFS) 2007 Record of Decision (ROD) eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009, order until further proceedings. Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement, adopted by the District Court on July 6, 2011.

The Ninth Circuit Court of Appeals issued an opinion on April 25, 2013, that reversed the District Court for the Western District of Washington's approval of the 2011 Survey and Manage Settlement Agreement. The case is now remanded back to the District Court for further proceedings. This means that the December 17, 2009, District Court order which found National Environmental Policy Act (NEPA) inadequacies in the 2007 analysis and RODs removing the Survey and Manage requirement is still valid.

Previously, in 2006, the District Court (Judge Pechman) had invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation had entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (referred to as the "Pechman Exemptions"). Judge Pechman's October 11, 2006, order directs as follows:

*Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applies unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:*

- a. Thinning projects in stands younger than 80 years old;*
- b. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;*
- c. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and*
- d. The portions of project involving hazardous fuel treatments where prescribed fire is applied.*

*Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph.*

Following the District Court's December 17, 2009, ruling, the Pechman exemptions still remained in place. The USFS have reviewed the Project's Environmental Assessment (EA) in consideration of both the December 17, 2009, partial

summary judgment and Judge Pechman's October 11, 2006, order. The Project consists of a suite of restoration activities described in detail in the Project EA document that would fit within Pechman Exemptions B and C (October 11, 2006, order).

The Project's Proposed Action entails the following restoration activities:

**Instream Habitat Restoration**

1. Restoration and Enhancement of In-Channel Habitat
2. Floodplain Restoration
3. Removal or Retrofitting of Fish Passage Barriers, Small Dams, Flood Gates, Pilings and Other In-water Structures
4. Water Conservation Projects (minimal ground disturbance)
5. Salmon Carcass Placement (no ground disturbance)
6. Remote Site Incubators (RSIs) (minimal ground disturbance)

**Upslope Habitat Restoration**

7. Bioengineered Bank Stabilization
8. Aquatic, Wetland, Riparian, and Upslope Habitat Enhancement

**Road Maintenance, Rehabilitation, and Decommissioning Activities**

9. Road Maintenance
10. Road Rehabilitation
11. Road Decommissioning

All of the proposed restoration activities are intended to improve stream and riparian habitat (including culvert replacements) while minimizing ground disturbance to the extent possible. No forest management actions are proposed as part of the Proposed Action. Therefore, the USFS have made the determination that Project meets Exemption B and C of the Pechman Exemptions. Therefore, the Project may still proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage ROD since the Pechman Exemptions would remain valid in such a case.