Overrides of the National Environmental Policy Act (NEPA) in Senator Wyden's O&C lands legislation (S.1874)

Bill provision	How the bill overrides NEPA or limits review
Pg. 61 – §104(a) "(2) PERIOD.—The environmental impact statements required under paragraph (1) shall cover the 10–year period beginning on the date on which the record of decision for the environmental impact statement is issued. "(3) INDIVIDUAL PROJECTS.—The final comprehensive environmental impact statement shall be used for individual projects during the 10–year period described in paragraph (2). "(4) ADDITIONAL ANALYSIS.—No additional analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be required for individual projects under this Act unless explicitly required by this Act or there exists clear and convincing evidence regarding significant adverse environmental impacts of the project that were not considered in the comprehensive environmental impact statements."	**Limits NEPA analysis to once every 10 years and virtually prohibits analysis of individual project impacts.** The bill mandates that a single environmental impact statement shall provide sufficient analysis and public disclosure of the environmental effects for 10 years of individual timber harvest projects on more than 1 million acres. The bill then shields BLM from being required to conduct and publicly disclose any analysis of the environmental impacts of individual timber sales even if such logging would require environmental impact statements under NEPA as "major federal actions significantly affecting the quality of the human environment." Additionally, the bill provision prevents tiering of environmental analyses under NEPA from broader environmental impact statements to subsequent narrower statements or environmental analyses for individual projects as provided for in regulation (40 CFR 1508.28). Instead, NEPA analysis and public disclosure of the environmental effects of individual logging projects can only occur if there exists "clear and convincing evidence regarding significant adverse environmental impacts of the project that were not considered in the comprehensive environmental impact statements." Consequently, even if conditions on the ground have substantially changed since completion of the 10-year EIS or more detailed information is needed to make an informed decision about project impacts, the BLM cannot be required to conduct any environmental assessment unless the unjustifiably burdensome new standard can be met.

Pg. 62 – §104(b)(1) "(1) IN GENERAL.—Each environmental impact statement developed under subsection (a) shall analyze 3 alternatives, including— "(A) 1 no-action alternative; and "(B) 2 other alternatives that are consistent the management prescriptions and this Act for the forest type."	**Dramatically limits consideration of reasonable alternatives in the 10-year EIS.** Under NEPA, the analysis of reasonable alternatives is "the heart of the environmental impact statement," including "reasonable alternatives not within the jurisdiction of the lead agency" (40 CFR 1502.14). The bill, however, both limits the number of alternatives that can be assessed and significantly narrows the scope of analysis by forcing the agency to only consider alternatives that are consistent with its long list of extremely detailed, mandatory management prescriptions. The BLM cannot, for example, consider any alternative that designates forests in any way other than how they are designated on maps prescribed by the legislation. Similarly, the BLM cannot consider alternatives that harvest less than 8-12% of the moist forests per decade in the forestry emphasis areas of designated moist forests. And the BLM cannot consider alternatives that do not distribute treatments approximately equally over a 10-year period or that do not divide treatments among BLM districts according to specific criteria. The bill prescribes so many restrictive parameters on the alternatives that it completely defeats the purpose of the analysis. This severe curtailment of the alternatives contributes to the inadequacy of the 10-year EIS.
Pg. 62 – §104(b)(2)(A) "(2) LIMITATIONS.— "(A) IN GENERAL.—The analysis of effects of each environmental impact statement described in subsection (a)(1) shall be limited to the effects of the actions authorized under section 103 that are consistent with the forest type."	**Prevents consideration of cumulative impacts in the 10-year EIS.** The impacts that must be analyzed and publicly disclosed under NEPA include the cumulative effects on the environment from other projects (40 CFR 1508.8). A cumulative impact is one that "results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.7). The bill limits the environmental impact statement solely to analysis of

	the effects of the specific actions it authorizes in the forestry emphasis areas. In doing so it precludes a cumulative impacts analysis and thus prevents consideration of past or future logging and other activities on surrounding private, state, tribal or Forest Service lands. Without consideration of cumulative impacts, proposed actions in the forestry emphasis areas are assessed in a vacuum. Cumulative effects assessment provides the broader context within which the proposed federal actions are to take place. Impacts cannot be accurately or fully understood without that context. The bill's elimination of cumulative impacts analysis, as currently required by NEPA, contributes dramatically to the inadequacy of the large-scale, 10-year EIS.
Pg. 62 – §104(b)(2)(B) "(B) ANALYSIS.— "(i) IN GENERAL.—The information contained within the timber prioritization plan, watershed analysis, dry forest landscape plan, and moist forest landscape plan shall— "(I) be used to develop an environmental impact statement described in subsection (a)(1); but "(II) not be separately analyzed in an environmental impact statement described in subsection (a)(1). "(ii) ADDITIONAL ANALYSIS.—Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), no analysis that is in addition to the environmental impact statement described in subsection (a)(1) shall be required under that Act for the timber prioritization plan, watershed analysis, dry forest landscape plan, and moist forest landscape plan."	**Shields key information from analysis in the 10-year EIS.** This provision of the bill further limits what can be analyzed in the 10-year environmental impact statements. The bill prescribes four documents that must be used in developing the large-scale environmental impact statement. They include a timber prioritization plan, watershed analysis, dry forest landscape plan, and moist forest landscape plan. BLM is required to use the information contained within these four documents but the agency is prohibited from separately analyzing that information either in the environmental impact statements or in separate NEPA reviews of those documents. Nowhere else in the bill is there environmental impact analysis of the information contained in the timber prioritization plan, watershed analysis, dry forest landscape plan, and moist forest landscape plan. Furthermore, these prescribed documents are not explicitly required to incorporate or be based upon best available science, and the watershed analysis document is created by an appointed committee not subject to balanced representation under Federal Advisory Committee Act.

	Shielding from NEPA analysis the very information that the BLM is required to use in developing the large-scale EIS significantly contributes to the inadequacy of that EIS and frustrates even a one-time hard look at 10 years of logging impacts.
Pg. 68 – §104(c)(2)(C) "(C) FINAL ENVIRONMENTAL IMPACT STATEMENTS.— "(i) IN GENERAL.—The Secretary shall issue the record of decision for the final environmental impact statements— "(I) 45 days after the date on which the final environmental impact statements are issued or immediately after the Secretary responds to an objection filed under clause (ii); and "(II) not later than 18 months after the date of enactment of the Oregon and California Land Grant Act of 2013. "(ii) OBJECTIONS.— "(I) IN GENERAL.—During the first 30 days of the period established under clause (i)(I), in lieu of any other appeals that may be available, any person may file an objection to the final environmental impact statements in accordance with section 105 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6515)."	**Limits challenges to the 10-year EIS.** The legislation replaces all administrative appeals available to the public regarding the final EIS with a dramatically abbreviated objections process. The limited objection process: • Reduces the statute of limitations on filing an objection from 6 years under the APA to a mere 30 days after the Final EIS. • Precludes any objection not previously raised in writing during the administrative process. • Limits the legal venues in which covered civil actions can be heard. A 30-day objection period is likely to lead any party that has participated in the process to rush to file an objection on every ground they can think of to preserve the right to object, unnecessarily increasing judicial engagement. Many other individuals will be denied the ability to object no matter how legitimate their concerns if they do not raise them within 30 days of the final EIS. This is the case even if there is no reasonable way for them to know that their interests or use of the forests would be impinged based on the general scope of a 10-year EIS. The large scale 10-year environmental impact statements are likely to be huge documents with volumes of material. Under this bill they also provide what is likely to be the only NEPA review of logging in forest emphasis areas for a decade. As such it is important to ensure that the public has adequate opportunity to review and understand the EISs. The judicial review limitations in the bill ensure the opposite.

Pg. 72 – §104(d)(1) "(d) CONSISTENCY DOCUMENT.— "(1) IN GENERAL.—For each project implemented under an environmental impact statement, the decision to proceed with the project shall be documented in a consistency document, which shall include, at a minimum— "(A) the record prepared, including the names of interested people groups and agencies contacted; "(B) a determination that no extraordinary circumstances exist; and "(C) a determination that the scope of work of the project is consistent with the original analysis and assumptions in the record of decision."	**Replaces NEPA with a rubber stamp approval process for individual projects.** NEPA analysis and public disclosure of the environmental effects of individual logging projects is replaced in the bill by a "consistency document" that requires nothing more than: • A list of names of interested people groups and agencies contacted, • A determination that no extraordinary circumstances (an undefined term) exist, • A determination that the project's scope (not effect) is consistent with the analysis and assumptions of the 10-year EIS. Even in cases in which a particular timber project would significantly affect the environment, there is no requirement before proceeding with the project to consider new information, changed conditions or changed circumstances as would occur under normal project level NEPA review. Project level assessments of timber sale proposals provide information essential to understanding water quality impacts; they also provide an opportunity to incorporate adaptive management and lessons learned from earlier projects and to allow citizens to weigh in on potential impacts to recreational use. Moving forward with 10 years of projects after an initial limited and cursory look at impacts is analogous to glancing once down a road and then driving it at full speed with your eyes closed. Agency decisions need to be able to adjust to changes as they occur. Instead this legislation requires both agencies and the public to essentially guess at what conditions will be and what impacts individual projects will have years down the line.
Pg. 73 – §104(d)(3) "(3) CAUSE OF ACTION.— "(A) IN GENERAL.—The only cause of action that may be brought challenging a consistency document shall be claims that	**Virtually eliminates challenges to projects lacking adequate NEPA assessment of environmental effects**. The legislation eliminates all but two very narrow causes of action to challenge individual timber sales. The first cause of action is limited to a challenge that the **scope of work**

the work to be performed under the consistency document is inconsistent with the record of decision or causes adverse impacts to species not listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) at the time the record of decision was prepared but which have been listed subsequent to the record of decision.	is inconsistent with the record of decision (ROD) on the original 10-year EIS (as opposed to the environmental impacts of a proposed project being inconsistent with the ROD). This is a near impossible cause of action because it is likely to be extremely difficult to establish that a project's scope is inconsistent with what is likely to be a very broad ROD. In addition, this construct excludes the ability to challenge a project for being inconsistent with new scientific information, changed circumstances, lessons learned or evolutions in our understanding of sound forest management. The only other cause of action is a claim that the scope of work will adversely impact a species listed under the Endangered Species Act subsequent to the issuance of the original ROD. This precludes the consideration of impacts to candidate species or the impacts to species already listed at the time of the ROD, even if those impacts were not anticipated in the ROD. Remarkably, the provision does not allow a cause of action challenging an individual project on the grounds that NEPA documentation is required by §104(a)(4) of the bill. As such, even if there exists clear and convincing evidence regarding significant adverse environmental impacts of the project that were not considered in the 10-year EIS, a challenge could only be brought on the grounds that such evidence was inconsistent with the ROD. Individual timber sales may "significantly affect the quality of the human environment" which is the standard for conducting an EIS. As such, project level NEPA review should be required to determine whether they would have that effect. Instead, this bill prevents robust scrutiny of all individual timber sales.